

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

3 -----
4 UNITED STATES OF AMERICA,

5 -versus-

08-CR-77

6 LINDA O'CONNOR and DEAN SACCO.
7 -----

8 TRANSCRIPT OF JURY TRIAL

9 held in and for the United States District Court,
10 Northern District of New York, at the Federal Building and
11 Courthouse, 15 Henry Street, Binghamton, New York, on
12 THURSDAY, May 22, 2008, before the HON. THOMAS J. McAVOY,
13 Senior United States District Court Judge, PRESIDING.

14 APPEARANCES:

15 FOR THE GOVERNMENT:

16 UNITED STATES ATTORNEY'S OFFICE

17 BY: MIROSLAV LOVRIC, AUSA

18 Binghamton, New York

19 FOR THE DEFENDANT O'CONNOR:

20 FEDERAL PUBLIC DEFENDER'S OFFICE

21 BY: LISA PEEBLES, AFPD

22 Syracuse, New York

23 FOR THE DEFENDANT SACCO:

24 KELLY FISCHER, ESQ.

25 Binghamton, New York

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1 (In open court)

2 (Jury present)

3 THE COURT: Morning, ladies and gentlemen.

4 How's everything today, all right?

5 Okay. Mr. Lovric, who do you got for us?

6 MR. LOVRIC: The next witness that we call is
7 Kelley Molanare.

8 THE COURT: Okay.

9 THE CLERK: State your name for the record.

10 THE WITNESS: Kelley Molanare,
11 M-O-L-A-N-A-R-E.

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1 K E L L E Y M O L A N A R E, having been called as a
2 witness, being duly sworn, testified as follows:

3 THE COURT: Okay. Mr. Lovric.

4 DIRECT EXAMINATION

5 BY MR. LOVRIC:

6 Q Good morning, Miss Molanare.

7 A Good morning.

8 Q Am I pronouncing that correctly?

9 A That's fine. Yes.

10 Q Miss Molanare, could you once again for the jurors
11 just tell them your full name and please tell them where you
12 work and what your title is?

13 A My name is Kelley Molanare. And I am a financial
14 analyst for the FBI and I work out of the Syracuse resident
15 agency.

16 Q Miss Molanare, about how long have you worked for
17 the FBI?

18 A I've worked for the FBI for 20 years.

19 Q And you're currently assigned out of the Syracuse
20 office, is that correct?

21 A That's correct.

22 Q About how long have you been assigned with the
23 Syracuse office?

24 A Twenty years.

25 Q Okay. And you indicated that you're a financial

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1 analyst with the FBI?

2 A That's correct.

3 Q Can you tell us a little bit about what that means
4 and what kind of work you do.

5 A I am an assistant to the special agents. I help
6 them with their financial cases, any case that may involve
7 financial analysis.

8 Q And from time to time in your capacity, do you have
9 interaction with FBI agents with respect to a case that they
10 might be working but more specifically dealing with financial
11 type inquiries or analyses?

12 A Exactly. That's exactly what I do.

13 Q Now when you do assist an FBI agent in their case,
14 do you necessarily become involved in all aspects of their
15 case or that investigation?

16 A No. Only those pertaining particularly to the
17 financials.

18 Q Okay. And is it a fair statement that you pretty
19 much will examine or look at various aspects of the financial
20 matter that the agent maybe directs you to or asks you to
21 take a look at?

22 A Yes. That's correct.

23 Q Okay. So in cases that you become involved, do you
24 kind -- do you take over and kind of go off -- you pretty
25 much rely on the agent to tell you where -- what he or she

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1 would like you to take a look at?

2 A Generally speaking, they will give me an idea of
3 the records they want reviewed. I review them. I provide
4 summary sheets to them and explain to them what exactly the
5 records contained.

6 Q Now, in the case at hand, did you at some point
7 become involved in assisting FBI Agent Jim Lyons, who's
8 seated in front of me?

9 A Yes, I did.

10 Q And at some point were you asked to take a look at
11 certain documentation, certain records in connection to this
12 matter?

13 A Yes, sir.

14 Q And in a moment I'll be talking and having you look
15 at a number of documents. But just as an approximation, you
16 know, approximately when was it that you became involved in
17 doing this financial examination?

18 A Probably ten weeks ago.

19 Q Okay. And since that time, and since doing some of
20 these financial analyses, have you and I sat down and gone
21 over some of these records?

22 A Yes, we have.

23 Q And in furtherance of the records that we're going
24 to be discussing, did you also prepare summaries of what
25 those records or some of the kinds of things that those

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1 records contained?

2 A Yes, I did.

3 Q And the summaries that you prepared, are those
4 summaries based upon the actual information contained in the
5 actual records that you examined?

6 A Yes.

7 Q Miss Molanare, I'd like to show you first
8 Government Exhibit 73. If you can take a look at that, Miss
9 Molanare. Do you recognize what that is?

10 A Yes, sir. The records we received from eBay.

11 Q Okay. And the stack of records in front of you, to
12 whom do those records relate or concern?

13 A The information concerns Dean Sacco.

14 Q And are those records that you actually at some
15 point received and then also examined and analyzed for
16 certain information?

17 A Yes, they are.

18 MR. LOVRIC: Your Honor, I would offer
19 Government's Exhibit Number 73 into evidence.

20 MR. FISCHER: Your Honor, may we have a
21 side-bar please?

22 THE COURT: Sure.

23 (At the bench)

24 MR. FISCHER: Your Honor, as I see it, you
25 have about an inch-high stack of documents relating to eBay

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1 that are being offered. I don't know why they're being
2 offered, whether they're relevant or not at this point
3 without any further proffer. There's a lot of stuff in there
4 that doesn't relate to cameras. I presume it's being offered
5 to prove purchase of cameras, that's my guess at this point,
6 and as to those items, they are relevant and probably should
7 come in, but with respect to the remainder, I don't think
8 that there's any relevance.

9 THE COURT: Okay. Let's hear from the
10 government.

11 MR. LOVRIC: Yeah, Judge. The records that
12 eBay has for Mr. Sacco shows everything that he's purchased
13 or sold. The relevance has to do with directly, he purchased
14 three cameras during a time frame. One of them is the video
15 camera, one of them is a Polaroid camera, another one is a
16 Fuji zoom camera, and that is relevant in this particular
17 case. The other things I don't think are in any way
18 prejudicial. He also bought a camera battery for the video
19 camera that he used. That's in evidence. There's nothing
20 prejudicial about other things. It just shows he bought a
21 speaker or bought a -- I think, you know, just regular
22 things, but it's not as though there's something in there the
23 jury is going to see that has nothing do with the case but
24 it's prejudicial. It's not like we're offering that he
25 bought 4,000 condoms or anything like that. There's

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1 anything -- but I just want to include all the records so
2 it's clear.

3 MR. FISCHER: I think we can stipulate to the
4 purchases on those dates of those items. And if I may, with
5 respect to the remainder, what the documents do tend to show
6 is that Mr. Sacco was a prolific computer user, that he spent
7 a lot of time on the computer doing certain things. There
8 are also some --

9 THE COURT: The government hadn't thought of
10 that, Kelly.

11 MR. LOVRIC: Thank you.

12 MR. FISCHER: I'm trying to help every way I
13 can.

14 There are also some things in there about
15 fraud investigations that I think are prejudicial that are
16 not relevant.

17 THE COURT: Well, let's do this.

18 MR. LOVRIC: There's nothing in there about
19 fraud.

20 THE COURT: Let's do this. The Court's going
21 to receive the exhibit insofar as it pertains to cameras and
22 camera bags, camera accessories. The rest of it is going to
23 be redacted out.

24 MR. LOVRIC: I have next a summary which shows
25 a summary of what he purchased. In there is cameras and

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1 camera batteries.

2 MR. FISCHER: I think we can do the same thing
3 with respect to that exhibit. Other items are redacted out,
4 with respect to camera batteries, those do go in the
5 summaries based on the eBay documents themselves.

6 MR. LOVRIC: I guess I don't understand why
7 it's being redacted. It shows what he's purchasing.

8 THE COURT: It's not relevant to this case,
9 and if the attorney who's representing the defendant
10 indicates that he objects to it and the government can't
11 establish relevancy, then I'm going to have to sustain the
12 objection.

13 MR. LOVRIC: I like defense arguments about
14 computer usage. I think it's good.

15 THE COURT: Maybe Mr. Fischer can stipulate to
16 that.

17 MR. FISCHER: I think it's cumulative.

18 MR. EGAN: It probably is.

19 THE COURT: We'll receive those two exhibits
20 subject to redaction. We'll worry about how to redact them.

21 (In open court)

22 THE COURT: Okay. The Court will receive
23 Government's Exhibits 73 in evidence subject to redaction.

24 BY MR. LOVRIC:

25 Q Miss Molanare, the eBay records that you examined,

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1 that are in front of you, those eBay records pertain again to
2 whom?

3 A Dean Sacco.

4 Q And the eBay records, do they indicate an address
5 for Dean Sacco?

6 A They do.

7 Q Can you read that to us?

8 A Sure. It's 930 Newark Ave., Jersey City, New
9 Jersey, Zip code 07306-1202.

10 Q And do they indicate an e-mail address for that
11 user, Dean Sacco?

12 A Yes, sir. That is americandesperado@hotmail.com.

13 Q And does the information in the eBay records also
14 provide a telephone number for Dean Sacco?

15 A Yes, it does.

16 Q What is that?

17 A That is (908)906-7917.

18 Q And in examining the eBay records, were you able to
19 determine and look at purchases made by Dean Sacco on eBay?

20 A Yes.

21 Q And in examining those records, were you able to
22 determine to what address Mr. Sacco had the items sent to
23 that he purchased on eBay?

24 A Yes, I did.

25 Q And what address were the items that were purchased

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1 sent to?

2 A They were sent to Glenwood Furniture, which is his
3 employer.

4 Q Okay. And with respect -- with respect to the
5 purchases made by Mr. Sacco, do the records indicate how it
6 was that Mr. Sacco paid for purchases that he made?

7 A Yes, it does.

8 Q How is that?

9 A Through PayPal.

10 Q Okay. What is PayPal?

11 A PayPal is a secure method of payment for people who
12 use internet purchase, who make internet purchases.

13 Q Okay. And is that the form of payment that Mr.
14 Sacco utilized in making purchases from eBay?

15 A Oftentimes, yes.

16 Q Okay. Now, Miss Molanare, I don't want to assume.
17 I want to ask you, are you familiar with what eBay is?

18 A Yes.

19 Q What is it, generally?

20 A The best way to describe it is like an online
21 auction or classified ad situation, like a newspaper almost.
22 You bid for items that are for sale and you purchase them on
23 line.

24 Q Okay. So for example, if a person has an item to
25 sell, whatever that item might be, how would they utilize

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1 eBay to sell that item?

2 A They would register and set up an account and
3 either buy or sell their product that they're interested in.

4 Q Okay. And if a buyer goes onto the eBay site and
5 sees something that they'd like to buy, how do they then
6 conduct that transaction in order to buy the item?

7 A They bid on it, and if they're the winning bidder,
8 then they would purchase it usually through a PayPal account.

9 Q Okay. And Miss Molanare, this eBay auction or
10 buying/selling company, how do you access it?

11 A Via the internet.

12 Q Okay. So you need a computer?

13 A Correct.

14 Q Is there a place that you can go and like be
15 physically present and look to buy something from eBay?

16 A No, you cannot.

17 Q So it's just on the internet?

18 A Exactly.

19 Q I'd like to next show you Government Exhibit Number
20 74.

21 MR. FISCHER: Thank you.

22 Q Miss Molanare, if you can take a look at Government
23 74. Just tell us generally, do you recognize what it is?

24 A Yes, I do.

25 Q What is that?

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1 A It's a summary sheet that I prepared regarding the
2 purchases that Mr. Sacco made.

3 Q Okay. And does that include some of the purchases
4 that Mr. Sacco made from this eBay company on the internet?

5 A Yes, sir.

6 MR. LOVRIC: Your Honor, I would offer Exhibit
7 74 to the extent discussed at the side-bar.

8 MR. FISCHER: On that basis, no objection.

9 THE COURT: Okay. We'll receive Government's
10 74 subject to redaction.

11 BY MR. LOVRIC:

12 Q Miss Molanare, what I'd like to ask you to do is,
13 on Government Exhibit 74, I've highlighted several items, do
14 you see that?

15 A Yes, I do.

16 Q And the items that are highlighted there, what do
17 they represent, the highlights? What are those things in
18 connection with Dean Sacco's eBay account?

19 A They're items that he purchased, when he purchased
20 them, how much he paid for them.

21 Q Okay. And the information that is highlighted, is
22 that information that you found and obtained from those
23 records in Government Exhibit Number 73?

24 A Yes, they are.

25 Q I'd like to ask you if you could go to the first

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1 item highlighted and read, what is that item that was
2 purchased by Mr. Sacco?

3 A The first item was purchased on or around 9/23/03.
4 It's a Sharp camcorder, Viewcam camcorder.

5 Q What date was that purchased again?

6 A On or around 9/23/2003.

7 Q Okay. That Sharp video camcorder, how much did Mr.
8 Sacco pay to purchase that?

9 A \$180.50.

10 Q And based on your examination of the records, how
11 did he accomplish the payment for that item?

12 A Via PayPal account.

13 Q Okay. And where was that item shipped once Mr.
14 Sacco purchased it?

15 A To Glenwood Furniture.

16 Q Okay. Can you read the second item highlighted.
17 What is the purchase for that item?

18 A That is a Sharp series battery, VLHA series
19 battery.

20 Q When was that purchased?

21 A On or about 6/18/2004.

22 Q And how much did Mr. Sacco pay for that?

23 A \$29.90.

24 Q And where was that item shipped to?

25 A Glenwood Furniture.

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1 Q Same place in New Jersey that you mentioned
2 earlier?

3 A Correct.

4 Q Can you read the next highlighted item.

5 A The next item is a Polaroid EE 100 Special Land
6 camera. And that was purchased on or about June 23, 2004.

7 Q And how much was paid by Mr. Sacco for that item?

8 A \$8.99.

9 Q Where was that shipped to?

10 A Glenwood Furniture in New Jersey.

11 Q I take it all these items so far we discussed were
12 paid through this PayPal account?

13 A Correct.

14 Q Can you read the next highlighted item.

15 A The next item was purchased on June 23, 2005, on or
16 about that date. It's a Samsung T-Mobile R225 cellphone,
17 plus case.

18 Q How much was paid for that item?

19 A \$31.25.

20 Q And shipped to where?

21 A Glenwood Furniture in New Jersey.

22 Q And can you read the next item.

23 A The next item was purchased on or about May 18,
24 2006. It's a Fuji Discovery 1000 zoom 35-millimeter film
25 camera.

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1 Q And how much was that item purchased for?

2 A \$38.41.

3 Q And that was shipped to where?

4 A Glenwood Furniture in New Jersey.

5 Q Miss Molanare, I'd next like to talk to you about
6 some analysis, review that you did of various bank accounts.

7 In connection with your involvement, did you also -- were you
8 also asked to examine certain bank records and bank accounts?

9 A Yes, I was.

10 Q And were those bank records and bank accounts that
11 you examined, were they both for Mr. Sacco and for a person
12 named Linda O'Connor?

13 A Yes, they were.

14 Q I'd like to show you first Government Exhibit
15 Number 75. Miss Molanare, if you can take a look at Exhibit
16 75. And can you tell us if you recognize that, and what is
17 it?

18 A Yes, I recognize it. It's Provident Bank account
19 in the name of Dean M. Sacco d/b/a Rising Sun.

20 Q And are those bank records that were received from
21 Provident Bank?

22 A Yes, sir, they were.

23 Q Are those records that you reviewed and analyzed in
24 connection with a request by Agent Lyons?

25 A Yes, they are.

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1 MR. LOVRIC: Your Honor, I would offer
2 Government's Exhibit 75 into evidence.

3 MR. FISCHER: May I have a brief voir dire,
4 your Honor?

5 THE COURT: Sure.
6 VOIR DIRE EXAMINATION

7 BY MR. FISCHER:

8 Q Ma'am, what time frame do those records cover?

9 A They are from February '06 through April of '07.

10 Q Is it just Mr. Sacco care of Glenwood Furniture or
11 are there other business -- I'm sorry. Was it care of
12 Glenwood?

13 A Yes, it was.

14 Q Are there any records there care of Rising sun?

15 A That's his d/b/a so the account is in his name as
16 well as d/b/a.

17 Q The document you have in front of you is in both
18 the name of Mr. Sacco and Rising Sun care of Glenwood?

19 A Correct.

20 MR. FISCHER: Thank you, your Honor. No
21 objection.

22 THE COURT: All right. We'll receive
23 Government's 75 in evidence.

24 BY MR. LOVRIC:

25 Q Now, Miss Molanare, you had a chance to examine and

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1 review all of those exhibits in Exhibit 75?

2 A I did.

3 Q I'd like to show you next Government Exhibit 76.

4 MR. FISCHER: Your Honor, may I have just a
5 moment, please?

6 THE COURT: Sure.

7 BY MR. LOVRIC:

8 Q Miss Molanare, if you can take a look at Government
9 Exhibit 76 and tell us what that is, if you recognize it.

10 A It's a summary of the records that are contained in
11 Exhibit 75.

12 Q And Exhibit 76 that you're holding right now, does
13 that exhibit summarize in a chart form the usage of the Dean
14 Sacco bank card relating to the bank account in Government
15 Exhibit Number 75?

16 A Yes, it does.

17 Q Now, the bank account referenced in Exhibit 75,
18 what kind of account was or is that?

19 A It's a business advantage checking account.

20 Q And that's in the name of what again?

21 A Dean M. Sacco d/b/a Rising Sun.

22 Q Okay. And the address for that account is what
23 address?

24 A In care of Glenwood Furniture, 930 Newark Ave.,
25 Jersey City, New Jersey, and the Zip code is 07306-6316.

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1 Q And the records contained in Exhibit 75, do they
2 contain monthly statements for that account?

3 A Yes, they do.

4 Q Do those records in Exhibit 75 also contain copies
5 of checks that were written or drawn upon the account?

6 A Yes, they do.

7 Q And Government's Exhibit 75, does it -- in those
8 statements that you just referenced, are there also record
9 notations in those statements that show when the check bank
10 card, magnetic card was used at various either ATMs or other
11 locations?

12 A Yes, it does.

13 Q And in preparing Exhibit Number 76, did you go
14 through the records in Exhibit 75 and extract certain
15 information such as when checks are drawn on that account or
16 when the card, bank card is used at an ATM or when it's used
17 at a gas station or some other type of business to pay for
18 purchases?

19 A Yes, I did.

20 Q And did you then summarize that in Exhibit Number
21 76?

22 A Yes, sir, I did.

23 MR. LOVRIC: Your Honor, I would offer 76 into
24 evidence.

25 MR. FISCHER: No objection.

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1 MISS PEEBLES: No objection.

2 THE COURT: Receive Government's 76 in
3 evidence.

4 BY MR. LOVRIC:

5 Q Miss Molanare, I'd like to go through Government's
6 Exhibit 76 with you. I'm going to put on the screen page 1.
7 Can you see that?

8 A I can.

9 MR. LOVRIC: Is everybody's monitors on?

10 Q Miss Molanare, I've highlighted certain portions of
11 Exhibit 76 and page 1 we're now looking at. The first entry
12 highlighted, 2/16 of 2006, what does that entry represent?
13 What occurred on or about that date as far as this bank
14 account of Mr. Sacco's?

15 A There was a check written to Gerardo DiFiori for
16 \$125.

17 Q And then there's a notation: "Rent 46 Monitor."
18 Where does that information come from?

19 A From the memo portion of the check.

20 Q Right on the check itself?

21 A Exactly.

22 Q We see a similar entry on February 22, 2006, same
23 thing as the other one except a different date?

24 A That's correct.

25 Q So that involves a check written by -- written by

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1 someone on Dean Sacco's account?

2 A That's correct.

3 Q And then looking down on March 3, 2006, what is
4 that?

5 A That's another check to the same payee, Gerardo
6 DiFiori, for rent for \$125.

7 Q And does the same occur on March 9 of 2006 and
8 March 16, 2006?

9 A Yes, it does.

10 Q Then again at the very bottom, does the same occur
11 on March 24, 2006?

12 A Yes. That's correct.

13 Q I take it in the right-hand column of the memo,
14 whatever is written there is what you found on the actual
15 check written?

16 A That's exactly correct.

17 Q Turning to page 2 of Exhibit 76. On 4/24 of 2006
18 do you see that entry?

19 A I do.

20 Q Okay. Is that another check to a Mr. DiFiori?

21 A Yes, it is.

22 Q And then under the memo, is that the information as
23 you found it on the check?

24 A That's correct.

25 Q Turning now to page 3 of Exhibit 76. At the --

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1 towards the bottom of that page 3, August 22, 2006, do you
2 see that?

3 A I do.

4 Q What does that represent, that line entry?

5 A There was an ATM withdrawal of \$101.50 and the
6 location of the terminal was at 52 South Broad Street,
7 Norwich, New York.

8 Q Okay. And Miss Molanare, are you familiar with ATM
9 machines at withdrawal, if you're withdrawing money from a
10 bank that's not the bank that your account is drawn from?

11 A Yes.

12 Q Is it commonplace for ATM machines that are not the
13 bank that the account is at to charge a small withdrawal fee
14 if you're taking money out?

15 A Absolutely. It's a service charge.

16 Q Okay. What kind of denominations are those service
17 charges from various banks?

18 A Generally speaking, they're a dollar 50 and up.

19 Q So it could be a dollar 50 or more of a service
20 charge?

21 A Correct.

22 Q So for example, if you're going to take out a
23 hundred bucks, is it possible that you're going to be charged
24 a dollar or more for service fee?

25 A Exactly.

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1 Q Then we see entries below that. August 23, there's
2 two entries. Can you indicate what those two entries
3 represent on this Sacco account?

4 A The first one is Hess, that's a gas station, and
5 the purchase was for \$2.49, located in Bainbridge, New York.
6 The next one is Curtis, and I believe that's Curtis Lumber.
7 The purchase was for \$21.69, in Norwich, New York. And then
8 on August 24, Eckerd Corporation for 3.99 in Norwich,
9 New York.

10 Q Are you familiar with Eckerd pharmacies?

11 A Yes.

12 Q Pharmacy chain in Upstate New York?

13 A That's correct.

14 Q Turning next to page 4 of Exhibit 76. August 29,
15 2006. Purchase at where?

16 A At Super 7 for \$10, and the location is Sloatsburg,
17 New York.

18 Q And then September 1 of 2006?

19 A Purchase at Eckerd Corporation for \$4.80 in
20 Norwich, New York.

21 Q Now, these purchases that we've discussed, these
22 last several, four or five, the bank records indicate that
23 these are purchases that are debited from this Sacco account,
24 and how has that happened? Are these checks or is there
25 something else that debits the account?

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1 A There's a debit card and it's used at a point of
2 sale location, and the location would be identified as the
3 gas station or restaurant, grocery store.

4 Q So is it pretty much like we have observed of those
5 check cards we have that's affiliated with the checking
6 account?

7 A Yes, it is.

8 Q 9/5/2006, what does that relate to?

9 A Penn Traffic, P & C. It's a purchase of \$28.54 in
10 Norwich, New York.

11 Q And what is P & C?

12 A P & C is a grocery store. Penn Traffic is the
13 parent company of P & C.

14 Q Turning to page 5. 9/18/2006, we see a debit for
15 Norwich YMCA?

16 A That's correct. Twenty-eight dollars.

17 Q Then October 10, there's another entry for that
18 Curtis Lumber you indicated earlier?

19 A Yes. For \$8.46.

20 Q Now October 10, Hess for 42.45?

21 A That's correct. In Bainbridge, New York.

22 Q And at the very bottom, another debit for Norwich
23 YMCA, is that correct?

24 A Yes, it is.

25 Q Page 6. Just generally directing your attention.

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1 You see the October 23, 2006 and then October 25, 2006
2 purchases at Eckerd and then at P & C, both in Norwich,
3 New York?

4 A Right.

5 Q Are those also purchases made with the debit card
6 that you described a little bit earlier?

7 A Yes, they are.

8 Q Then October 27, that first one, ATM withdrawal?

9 A Yes.

10 Q Okay. So that's cash being taken out?

11 A Right, at 18 South Broad Street, Norwich.

12 Q Okay. And if the cash was taken out of the bank,
13 not Provident, would it be likely that a service charge of
14 some sort was charged?

15 A That's correct.

16 Q Then October 27, another purchase for \$20 in
17 Norwich?

18 A That's correct.

19 Q And then at the next entries, October 30, 31, and
20 November 2, purchases in various locations in New York, New
21 York state?

22 A Yes, they are.

23 Q Looking at page 7, and I'll just refer you to the
24 left-hand column dates. Does that indicate purchases made on
25 November 6 of 2006, November 13 of 2006, at various places in

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1 Norwich, Bainbridge and Deposit, New York?

2 A Yes, they are.

3 Q Exhibit 76, page 8. Just pointing your attention
4 to the dates November 20, November 21 of 2006. Purchases in
5 Norwich, New York?

6 A Yes. That's correct.

7 Q Towards the bottom, three purchases on December 4
8 of 2006 in Norwich, New York, Bainbridge and Deposit area?

9 A That's correct.

10 Q Page 9, just directing your attention to the dates.
11 December 11, 2006, purchase in Oxford, New York?

12 A That's correct.

13 Q And then we have another debit for the YMCA in
14 Norwich, and then following that is a purchase on
15 December 26, 2006 where?

16 A At Wal-Mart in Norwich.

17 Q And that was for what amount at Wal-Mart?

18 A \$5.12.

19 Q That indicates a purchase, a purchase date being
20 the date after Christmas of 2006?

21 A That's correct.

22 Q And then directing your attention, January 2, 2007
23 indicates two purchases, one in Bainbridge, one in Norwich,
24 New York?

25 A That's correct.

Kelley Molanare - Direct

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1 Q Now these purchases on this page, these purchases
2 were accomplished how?

3 A By way of a debit card.

4 Q Same bank card you described earlier?

5 A Exactly.

6 Q And then we see January 16, 2007, purchase at a
7 Norwich tire company in Norwich, New York?

8 A That's correct.

9 Q Then January 17, another debit for the Y?

10 A That's correct.

11 Q Looking at page 10. January 23, 2007. What does
12 that entry indicate?

13 A On January 23, 2007, check number 164 was written
14 to Pedersen Plumbing for \$500. The memo on the check
15 indicated an install at 45 Fair Street.

16 Q That was a check?

17 A That's correct.

18 Q That's that 164 check number?

19 A That's correct.

20 Q And then further down we see another Norwich YMCA
21 debit, and then we see the three items under February 26,
22 2007?

23 A Yes.

24 Q Okay. Now those three items under February 26,
25 2007, at P & C, Hess and Rite Aid, those purchases were made

Kelley Molanare - Direct

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1 how?

2 A By way of a debit card.

3 Q And those three, two occurred in Norwich, one in
4 Bainbridge of New York?

5 A That's correct.

6 Q Now, Miss Molanare, do you see the highlighted
7 portion -- this is page 11. Do you see the highlighted
8 portion on page 11?

9 A Yes.

10 Q What is that? What does that show in these
11 records?

12 A It indicates that a deposit was made on 36/20/07
13 and the deposit was for \$100. The deposit contained a US
14 postal money order.

15 Q And what was the amount of the money order?

16 A The money order was in the amount of \$113.

17 Q Okay. And it indicates a memo. What does that
18 mean?

19 A On the postal money order you have an area where
20 you can write a memo, and on that memo it said: "Rent for
21 March. Amount due 300 for January."

22 Q Take a look at Government Exhibit 77, Miss
23 Molanare, tell me if you recognize that.

24 A I do.

25 Q What is that?

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1 A US postal money order paid to Dean Sacco, and it
2 was paid by Linda O'Connor.

3 Q And is that a copy of part of the records that were
4 contained in Exhibit Number 75, which is the records for this
5 Provident Bank account of Dean Sacco's?

6 A Yes, they were.

7 MR. LOVRIC: Judge, I would offer Government
8 Exhibit 77 into evidence.

9 MR. FISCHER: No objection.

10 MISS PEEBLES: No objection.

11 THE COURT: Receive Government's 77 in
12 evidence.

13 BY MR. LOVRIC:

14 Q I'm going to put on the screen, Miss Molanare,
15 Government Exhibit 77. Can you see that?

16 A I can.

17 Q Is that one page a copy that's found in all of the
18 records that are in Exhibit 75?

19 A Yes, it is.

20 Q Okay. And can you just -- well, I'll read it since
21 it's on the screen. Indicates: "Pay to Dean Sacco, 930
22 Newark Ave., Jersey City, 07306." And below that it says,
23 "Rent for March." And below that it says, "Amount due 300
24 for January." Then on the right-hand side it says, "From
25 Linda O'Connor, 45 Fair Street, Norwich, New York 13815." Is

Kelley Molanare - Direct

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1 that what it reads?

2 A Yes, it does.

3 Q And then the amount of the money order is \$113.00,
4 is that correct?

5 A That's correct.

6 Q And then on the back of that item appears a
7 signature of a Dean Sacco and then account number?

8 A That's correct.

9 Q The account number I take it is this Provident
10 account that is Exhibit 75?

11 A Yes, it is.

12 Q Now, Miss Molanare, this postal money order was
13 deposited into this Dean Sacco account?

14 A Yes, it was.

15 Q And that was deposited on what date?

16 A March 6 of 2007.

17 Q Okay. Now, are there any other either money orders
18 or checks or any other type of instrument from Linda O'Connor
19 deposited into this Dean Sacco account?

20 A No, there was not.

21 Q Miss Molanare, before I leave this topic, I want to
22 put on the screen again Exhibit 76.

23 A Okay.

24 Q And at the very top where there's a date,
25 February 7, 2006, do you see that?

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1 A I do.

2 Q When was this account opened?

3 A It was opened on February 7, 2006 with a cash
4 deposit of \$50.

5 Q Okay. And so the account is opened on that date.
6 And when is the account closed? And I'm putting on the
7 screen now the 11th page of your summary.

8 A April 20 of 2007 the account was closed with a
9 credit of \$141.43.

10 Q Okay. I'd like to next show you, Miss Molanare,
11 Exhibit 78 and 79.

12 Miss Molanare, if you can look at 78 and 79 and
13 tell me if you recognize what those items are.

14 A Yes, I do.

15 Q What is 78 first?

16 A Number 78 is a receipt and warrant for a purchase
17 at Pet Depot.

18 Q And what date does that reference as far as the
19 purchase?

20 A The purchase date shows August 1, 2006.

21 Q And then what is 79?

22 A Purchase date shows January 30, 2007.

23 Q And what business does that relate to, Government
24 Exhibit 79?

25 A Seventy-nine relates to Pet Depot as well.

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1 Q Okay.

2 MR. LOVRIC: I would offer Government Exhibit
3 78 and 79, Judge.

4 THE COURT: No objection?

5 MISS PEEBLES: No objection.

6 MR. FISCHER: No objection.

7 THE COURT: Receive Government's 78 and 79 in
8 evidence.

9 BY MR. LOVRIC:

10 Q Miss Molanare, looking at Government Exhibit 78,
11 what is that purchase for?

12 A It is for a dog as well as some miscellaneous
13 items.

14 Q And that's dated when?

15 A August 1, 2006.

16 Q And what's the total purchase on that date?

17 A Total purchase was \$731.62.

18 Q And does it indicate who the person was that was
19 making that purchase on that document?

20 A Yes. The purchaser is Linda O'Connor at 45 Fair
21 Street, Norwich.

22 Q And then Exhibit 79, would you look at that again.
23 What is purchased with Exhibit 79? What does that indicate
24 is being bought?

25 A Puppy.

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1 Q And the date again on that?

2 A January 30, 2007.

3 Q And what was the amount spent on that date at Pet
4 Depot?

5 A \$810.

6 Q And who's the person buying that dog that day?

7 A Linda O'Connor at 45 Fair Street, Norwich,
8 New York.

9 Q In fact, do both of those records indicate Miss
10 O'Connor's 45 Fair Street address?

11 A Yes, they do.

12 Q Miss Molanare, I'd next like to show you Government
13 Exhibit Number 114. If you could take a look at Exhibit 114
14 and tell us if you recognize what that is.

15 A Yes, I do.

16 Q What is that?

17 A It's account statement for Linda O'Connor.

18 Q And what institution does that relate to, what
19 banking institution?

20 A That is NBT account, I believe.

21 Q And in looking at financial documents, did you
22 examine the records that are contained in Government's
23 Exhibit Number 114?

24 A Yes, I did.

25 Q And in examining those records, did you then at

Kelley Molanare - Direct

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1 some point prepare a summary of the transactions that are
2 reflected in those documents?

3 A Yes, I did.

4 Q Next I'd like to show you Government Exhibit Number
5 115.

6 MR. FISCHER: Thank you.

7 Q Miss Molanare, looking at Government's Exhibit 115,
8 can you tell us if you recognize that and what that is.

9 A I do recognize it. It's a summary chart for the
10 account listed as Exhibit 114.

11 MR. LOVRIC: Judge, I would offer Government's
12 114 and 115 into evidence.

13 MR. FISCHER: No objection.

14 MISS PEEBLES: Your Honor, may I have a quick
15 voir dire of this witness?

16 THE COURT: Sure.

17 VOIR DIRE EXAMINATION

18 BY MISS PEEBLES:

19 Q Ms. Molanare, are there withdrawals or deposits
20 that aren't reflected on your chart that you have in front of
21 you?

22 A No. It's all-inclusive.

23 Q You're positive about that, based on what you have
24 in front of you?

25 A Yes.

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1 Q There's no indications of any December deposits and
2 withdrawals of '06 on that document, it only goes to
3 November?

4 A Yeah. I'll check it.

5 No. That's correct.

6 MISS PEEBLES: No objection, Judge.

7 THE COURT: Okay. We'll receive Government's
8 114 and 115 into evidence.

9 BY MR. LOVRIC:

10 Q Miss Molanare, I'm going to put on the screen
11 Exhibit 115, your summary chart.

12 A Okay.

13 Q Can you see that?

14 A I can.

15 Q Now, this summary chart is a summary for a bank
16 account relating to whom?

17 A Linda O'Connor.

18 Q And you had already indicated it's an NBT account?

19 A That's correct.

20 Q And what type of an NBT account was this?

21 A Checking.

22 Q And the account address for the account is what?

23 A Forty-five Fair Street, Norwich, New York 13815.

24 Q Okay. And this summary chart that you prepared
25 goes from approximately September 21 of '06, is that correct?

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1873

1 It starts at September 21 of '06?

2 A Yes.

3 Q And then I'll flip to the last page, and it goes up
4 until when?

5 A November 16, 2006.

6 Q Okay. And what happens on November 16 of 2006 to
7 this account?

8 A The bank charges off this account because it had a
9 negative balance, and the negative balance amount was
10 \$456.98.

11 Q What does that mean, the bank charges off the
12 amount?

13 A They've been -- they're unable to collect the
14 money. They take a loss themselves for the account.

15 Q So that's the amount that the person that opened
16 this account owes them and the account gets closed with that
17 loss to the bank?

18 A That's correct.

19 Q I'm going to put on the screen the first page of
20 this account again and just have you talk a little bit about
21 it. Just for the jury's edification, can you just describe
22 what the debits and credits column represent, what
23 information you placed in there and what that shows?

24 A The debits indicate a withdrawal or a decline in
25 the balance of the account, and the credits show an addition

Kelley Molanare - Direct

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1 to the account.

2 Q Okay. So if money is being put in either by way of
3 checks or cash, that would show up in which column?

4 A As a credit.

5 Q And then if money is being withdrawn either through
6 an ATM machine or checks or a bank card, that would show up
7 in which column?

8 A As a debit.

9 Q Now, do you see that deposit of 2,000 on
10 September 21, 2006?

11 A I do.

12 Q And then looking at the left columns, September 25
13 of '06, 26, and then continuing October 4, 5, and down to
14 November -- excuse me. Down to October 16, there's various
15 either ATM withdrawals or withdrawals from this account, is
16 that correct?

17 A That's correct.

18 Q And what happens to this account between
19 September 21 of 2006 and October 17 of 2006, less than a
20 month later?

21 A It's depleted. It's drawn down to \$4.26.

22 Q And on October 17 of 2006, what does this account
23 balance actually show?

24 A On October 17 the balance is negative \$12.34.

25 Q Now, on the far right-hand column, what does it

Kelley Molanare - Direct

1875

1 signify when you have parens around the amount?

2 A That's a negative balance.

3 Q So for example, on parentheses, so for example
4 there when it -- when it says \$4.26, is that a positive or
5 negative balance?

6 A That's a positive.

7 Q Immediately below it, when it says (12.34), what
8 does that signify?

9 A That's a negative \$12.34.

10 Q And what is signified by insufficient funds and
11 overdraft fees? What does that indicate in this account?

12 A That means the account is overdrawn or the item
13 that was drawn on the account was larger than the amount that
14 was in the account.

15 Q Not enough money in the account?

16 A Correct.

17 Q Then turning to page 2 of that exhibit, we see
18 numerous entries, returned check, redeposit check and
19 returned check. Do you see that?

20 A I do.

21 Q Checks bouncing on the account?

22 A Exactly.

23 Q I'd next like to show you Government's Exhibit 116
24 and 117. If you take a look at Exhibit 116 first and tell us
25 if you recognize what that is.

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1876

1 A Yes. That's an NBT account for Linda O'Connor.

2 Q And what time frame does that account cover,
3 approximately?

4 A December 2005 to October 2006.

5 Q And then what is Government Exhibit Number 117?

6 A Number 117 is a summary sheet that I created
7 regarding Exhibit Number 116.

8 MR. LOVRIC: I would offer 116 and 117 into
9 evidence.

10 MISS PEEBLES: Just a quick question.

11 VOIR DIRE EXAMINATION

12 BY MISS PEEBLES:

13 Q Miss Molanare, that doesn't reflect any activity in
14 November or December of 2006. It stops right at October?

15 A Correct.

16 MISS PEEBLES: No objection.

17 MR. FISCHER: No objection.

18 THE COURT: Receive Government's 116 and 117
19 in evidence.

20 BY MR. LOVRIC:

21 Q I'll put on the screen Exhibit Number 117. And
22 looking at 117, specifically looking at February 17, 2005,
23 there's a deposit, do you see that?

24 A Yes, I do.

25 Q That's a deposit of what and from where?

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1 A It is a deposit of \$909 from US Treasury and it was
2 a tax refund.

3 Q On that same date does that entire amount get
4 withdrawn?

5 A It is.

6 Q And then on February 21 of '05 is there a deposit?

7 A There's a deposit for \$181. It was a New York
8 State tax refund.

9 Q And on that same date is almost the entire amount
10 withdrawn?

11 A Yes, it is.

12 Q And then do you see the deposit on July 24, 2006?

13 A Yes.

14 Q What amount is that?

15 A \$3,573.51.

16 Q And then between July 24 of '06 and down to
17 approximately August 8 of 2006, some less than two weeks
18 later, is almost the entire amount withdrawn or depleted?

19 A Yes, it is.

20 Q And are most of the transactions withdrawals of
21 cash or some type of cash form?

22 A Yes, they are.

23 Q Now, at the -- further down on September 1, 2006,
24 do you see a deposit for \$611?

25 A Yes, I do.

Kelley Molanare - Direct

1878

1 Q Where is that deposit coming from?

2 A It's a US Treasury check, Supplemental Security.

3 Q Okay. Is that some kind of SSI, typically called
4 SSI?

5 A Yes.

6 Q Miss Molanare, I'd next like to show you
7 Government's Exhibits 118 and 119.

8 MISS PEEBLES: Your Honor, may we have a
9 side-bar?

10 THE COURT: Sure.

11 (At the bench)

12 MISS PEEBLES: These date back to 2004. I
13 don't even know why they're being offered.

14 MR. LOVRIC: I couldn't hear you.

15 THE COURT: So they go back to 2004 and she
16 fails to see the relevance of documents from that time frame.

17 MR. LOVRIC: The relevance is Linda O'Connor
18 is, along with Dean, but along -- Linda O'Connor is charged
19 with sex trafficking between January of 2004 through March of
20 2007. There's been testimony and it is the government's
21 belief and theory that one of the reasons that Linda O'Connor
22 allowed George Lang to engage in sexual contact with Shannon
23 O'Connor during the time frame that's charged is because she
24 was getting -- and in fact there was testimony she was
25 getting assistance from George Lang in terms of financial

Kelley Molanare - Direct

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1 assistance in terms of helping with rent and helping with
2 other ways. These records show that Linda O'Connor had
3 financial difficulties during that time and in fact did not
4 have money, and our belief is that they're relevant to show
5 that is one of the reasons why she was allowing George to do
6 what he did to her, because she needed money, and George was
7 willing to give her assistance, money and rent.

8 MISS PEEBLES: That was not gleaned by the
9 testimony that was offered. Renee Lang never said anything
10 about paying her rent or anything --

11 THE COURT: There was testimony about George
12 giving her money. I can't remember the source of that.

13 MISS PEEBLES: That was Shannon who said she
14 thought. She didn't even have any firsthand knowledge of
15 that, Judge.

16 THE COURT: That's a way of speaking, when
17 somebody made an objection from the bench, I think this
18 happened or I don't think it happened. It's just a
19 phraseology of speech. And it doesn't characterize the
20 degree of certainty; I agree with that. It's not like, oh,
21 I'm sure that, you know, George was helping her. It's the
22 way people talk. I think this happened, I think it didn't
23 happen. So if there's support for the fact that there was
24 money coming from Mr. Lang to Miss O'Connor, I think that's
25 relevant and I think part of something that would tend to

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1 establish it's more likely than not that Linda O'Connor may
2 have prostituted her daughter to George Lang.

3 MISS PEEBLES: Well, in light of the fact that
4 she stated that it started occurring in December of '05,
5 which is what she said, and she said -- that's what she said
6 on the tape, then it doesn't go back to '04 anyway.

7 MR. LOVRIC: It does, because when I
8 redirected Shannon, she indicated that she recalls Christmas
9 at the Langs in December of '04, and she indicated that when
10 the abuse started it was still wintertime. Approximately
11 2004.

12 THE COURT: It was snowing, it could have been
13 July in Deposit.

14 MR. LOVRIC: Well, possibly, but my argument
15 is that it was in 2004 and there is support for that. We can
16 argue that. These records are relevant to show at the time
17 Linda O'Connor did have financial difficulties.

18 MISS PEEBLES: You can go back her entire
19 life, she's had financial difficulties.

20 THE COURT: That's probably true.

21 MR. LOVRIC: But it would be one thing if I
22 was putting in records from 2000. This is at a time that's
23 charged in the indictment. The indictment charges sex
24 trafficking from 2004 through March of '07.

25 THE COURT: I think it's relevant. Again,

Kelley Molanare - Direct

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1 you're still able to argue what you've argued here at
2 side-bar to the jury. Here's what the government -- this is
3 the great proof they've got. Look, they're going back to
4 2004, she said nothing happened until 2005. So -- Overruled.

5 (In open court)

6 THE COURT: Okay.

7 BY MR. LOVRIC:

8 Q Miss Molanare, I'm going to show you Government
9 Exhibit 118 and 119. If you can look at 118 first. Just
10 tell us if you recognize it, what it is.

11 A I do. It's bank statements for NBT Bank for Linda
12 O'Connor.

13 Q And 118 records reflect what time frame?

14 A They are from April of '04 through October of '04.

15 Q And then what is Exhibit 119?

16 A That is my summary that I created reflecting the
17 information that's in Exhibit Number 118.

18 MR. LOVRIC: I would offer 118 and 119 into
19 evidence.

20 THE COURT: The Court will receive those
21 exhibits subject to objection on the record. 118 and 119.

22 Q I'm going to put on the screen, Miss Molanare,
23 Exhibit 119.

24 A Okay.

25 Q And that first page shows a summary of account

Kelley Molanare - Direct

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1 activity with respect to Linda O'Connor starting April 30,
2 2004?

3 A That's correct.

4 Q And what type of an account was this?

5 A It's a budget checking account.

6 Q Okay. And what is the address on the account?

7 A 11 River Street, Deposit, New York, 13754.

8 Q And then I'm going to flip to the third page of
9 your summary. I'm putting that on the screen, the third page
10 of Exhibit 119. And again, on the right-hand column we see
11 numbers in parentheses, and that indicates what?

12 A Negative balance.

13 Q And then putting on the screen the fifth page, on
14 the fifth page of Exhibit 119, there's references to returned
15 checks, and on the right-hand column the balances appear all
16 to be negative for that entire page, is that correct?

17 A That's correct.

18 Q And by October 1 of 2004, what is the balance in
19 this account?

20 A The balance is negative \$586.22.

21 Q And then on the last page of Exhibit 119, page 6.

22 A The last transaction on October 7, 2004 is a
23 closing transaction with a credit of \$315.78, bringing the
24 balance to close.

25 Q Okay. Now, what does that mean? What did the bank

Kelley Molanare - Direct

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1 do on October 7, 2004?

2 A They closed the account down and took a loss of
3 \$315.78.

4 Q And finally, I'd like to show you Government's
5 Exhibits 120 and 121.

6 I'm going to show you Exhibit 120, 121, Miss
7 Molanare, and if you take a look at 120, do you recognize
8 that?

9 A Yes, I do.

10 Q What is 120?

11 A 120 is People's National Bank account for Linda
12 O'Connor.

13 Q And what time frame does Exhibit 120 relate to?

14 A December of 2004 through December of 2007.

15 Q And what type of an account is that?

16 A It is a checking account.

17 Q And then what is Exhibit 121?

18 A 121 is a summary sheet that I created of the
19 contents in Exhibit 120.

20 MR. LOVRIC: I would offer Exhibit 120 and 121
21 into evidence.

22 THE COURT: No --

23 MR. FISCHER: No objection.

24 MISS PEEBLES: No objection.

25 THE COURT: Receive Government's 120 and 121

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1 into evidence.

2 BY MR. LOVRIC:

3 Q Putting on the screen, Miss Molanare, Exhibit 121,
4 the first page indicating that the account was opened about
5 when?

6 A December 30, 2004.

7 Q And then towards the bottom portion we see a
8 deposit on February 11, 2005, \$818. Again, do you see that?

9 A I do.

10 Q That's a deposit of what?

11 A \$818, it's US Treasury tax refund.

12 Q Further on March 1 of '05, \$222 from where?

13 A New York Tax refund.

14 Q Same date, deposit of \$587, do you see that?

15 A I do.

16 Q And that's a deposit of what?

17 A Supplemental Security Income.

18 Q Page 2, Exhibit 121, do you see that entry on
19 March 9, 2005?

20 A Yes, I do.

21 Q What kind of a transaction was that?

22 A March 9, check number 132 is for \$100, month of
23 July back rent.

24 Q And then check number 134, what is that?

25 A Written on March 9, 2005, to Sharon Wright for \$200

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1 for back rent.

2 Q And again, directing your attention to the
3 right-hand column, we see from time to time on this page
4 parentheses around the balances. Again, that indicates what?

5 A A negative balance.

6 Q 4/1/05, you see a deposit of 587. Again, is that
7 also that same SSI check?

8 A Yes, it is.

9 Q On page 4 of Exhibit 121, numerous insufficient
10 funds charges, do you see that?

11 A I do.

12 Q And negative balances?

13 A That's correct.

14 Q On page 5, looking at the bottom portion, August 3
15 of '06, there's entries August 3, September 5, October 3,
16 November 5, December 3, all showing negative balances, is
17 that correct?

18 A That's correct.

19 Q And then into January of 2007, showing a negative
20 balance?

21 A That's correct.

22 Q And then the final page, page 6. Into 2007, all
23 those dates again showing negative balance?

24 A That's correct.

25 MR. LOVRIC: Those are all the questions I

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1 have, Judge.

2 THE COURT: Okay. Mr. Fischer?

3 MR. FISCHER: Your Honor, based on the
4 summaries that I have not seen before, I'd like to take some
5 time to go through those before I question.

6 THE COURT: Okay, ladies and gentlemen. Do
7 you want to step aside for a few moments, please.

8 (Jury excused)

9 (Jury present)

10 THE COURT: Okay, Mr. Fischer.

11 MR. FISCHER: Thank you, your Honor. May it
12 please the Court.

Kelley Molanare - Cross

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1 CROSS-EXAMINATION

2 BY MR. FISCHER:

3 Q Miss Molanare, my name is Kelly Fischer. I
4 represent Mr. Sacco. The Provident Bank records that you
5 produced today --

6 A Yes.

7 Q -- are they all of the Provident Bank records that
8 you've reviewed?

9 A Yes, they are.

10 Q The documents that you produced and have been
11 offered in evidence today, are those all of the documents
12 that you reviewed in preparing for this matter?

13 A Yes, they are.

14 Q What was the date, the time frame for the Provident
15 Bank records that you were asked to review?

16 A It would show on my summary sheet. I don't have it
17 in front of me. It's located at the bottom of the sheet.

18 Q I'll show you Government's Exhibit 76 and ask if
19 that identifies the time frame.

20 A Yes. It does. It identifies February 7, '06
21 through April 20, '07.

22 Q Thank you. You were not asked to review records
23 prior to February 7 of 2006 for the Provident Bank, am I
24 correct?

25 A Everything that's in that -- I reviewed is in that

1 summary sheet.

2 Q You did not review records from HSBC?

3 A I did review records.

4 Q From HSBC?

5 A I did.

6 Q So you reviewed documents other than the documents
7 that we have here?

8 A Correct.

9 Q What documents other than what we have here did you
10 review in preparation for your testimony?

11 A I don't have a list of them with me, but I did see
12 an HSBC account. I can't recall them off the top of my head.

13 Q Do you remember also seeing records from a Bank of
14 America account?

15 A Yes.

16 Q Did you see records from an HSBC credit card
17 account?

18 A I did.

19 Q Did you see a Bank of America credit card account?

20 A Yes. I believe so.

21 Q When did you review those?

22 A Within the last ten weeks.

23 Q The accounts that you reviewed -- withdraw that.
24 Did you also review Provident Bank records that were dated
25 prior to February 2006?

Kelley Molanare - Cross

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1 A Different account, yes.

2 Q A different Provident account?

3 A Yes. I believe so.

4 Q Did you review any Provident account records from
5 the account reflected in Exhibit 75 that predated February of
6 2006?

7 A No. Everything that's included there, that I
8 reviewed.

9 Q In reviewing Mr. Sacco's credit card bills, do you
10 remember that, say, end of 2006, into early 2007 he carried a
11 balance?

12 A I believe so, yes.

13 Q Do you recall that he carried a balance on the --
14 let's say, HSBC account of over a thousand dollars?

15 A I couldn't tell you without looking at it.

16 Q I'll show you Exhibit S-25.

17 MR. FISCHER: If I may approach, your Honor?

18 THE COURT: Yes.

19 A Okay.

20 Q Can you identify what that is?

21 A That's an HSBC credit card statement.

22 Q Can you tell the time frame that covers by looking
23 at the document?

24 A Shows January -- January of '06 through -- I'm
25 sorry. These are backwards. October of '06 through January

1 '07.

2 Q Can you tell -- withdraw that. Did you review
3 those documents?

4 A I did.

5 Q Does that refresh your recollection that -- about
6 the amount that Mr. Sacco owed end of '06 into early '07?

7 A Yes.

8 Q How much was that?

9 A \$1,749.48.

10 Q Do you remember looking at the Bank of America
11 credit card records?

12 A Yes.

13 Q I'll show you Document S-26. Can you identify
14 that?

15 A This is a Bank of America account in the name of
16 Dean Sacco.

17 Q That's a credit account?

18 A Yes.

19 Q That shows money that Mr. Sacco owed to the Bank of
20 America?

21 A Correct.

22 Q You reviewed those records?

23 A Yes.

24 Q How much did Mr. Sacco owe the Bank of America on
25 that credit card account, say, in January 2007?

Kelley Molanare - Cross

1891

1 A In January 2007, he owed \$6,003.26.

2 Q Did you review copies of checks from Bank of
3 America drawn on Mr. Sacco's account?

4 A I did.

5 Q I'll show you Exhibit S-27. I have my tab on one
6 of those yellow pages. Other than that, can you identify
7 that document?

8 A Yes.

9 Q What is that document?

10 A These are checks that Mr. Sacco wrote on his
11 account to pay bills.

12 Q From approximately what time frame to what time
13 frame does that cover?

14 A This shows December of '06 through March of '07.

15 MR. FISCHER: Your Honor, I'll offer this
16 document into evidence, Exhibit S-27.

17 MR. LOVRIC: I have no objection.

18 MISS PEEBLES: No objection.

19 THE COURT: Receive Defendant's S-27 in
20 evidence.

21 BY MR. FISCHER:

22 Q Miss Molanare, during the time frame, say November
23 of '06 into early 2007, Mr. Sacco was paying bills at this
24 time, am I correct?

25 A Correct.

1 Q He was paying against his Bank of America credit
2 card?

3 A I believe so, yes.

4 Q He was paying the water bill in Norwich -- I can
5 use the viewer. I'll try to use the viewer to show these to
6 you. He was paying his water bill in Norwich?

7 A Right.

8 Q He was paying a Chase home finance mortgage loan?

9 A Right.

10 Q Do you know whether he carried a second mortgage on
11 that property?

12 A Yes. I believe he did, or a line of credit.

13 Q Do you know that Mr. Sacco was paying a bankruptcy
14 lawyer at this time?

15 A Yes, I did see that in the records.

16 Q And that's this Gene Seelinger, S-E-E-L-I-N-G-E-R?

17 A Correct.

18 Q He was paying NYSEG during this time?

19 A Yes.

20 Q He also paid a fellow by the name of Ron Donahue on
21 March 4 of 2007, \$350 for floor. Is that correct?

22 A Yeah. That's what the check says, yes.

23 Q Can you tell when that check went through for
24 payment?

25 A Looks like the date is March 9 that it was paid.

Kelley Molanare - Cross

1893

1 Q And the check itself is dated March 4?

2 A Right. But it cleared the bank on the 9th.

3 Q Five days later?

4 A Right.

5 Q In reviewing Mr. Sacco's banking records, you
6 remember seeing payments to a plumbing company?

7 A Yes.

8 Q Curtis Lumber?

9 A Correct.

10 Q Pedersen Plumbing?

11 A Yes.

12 Q Do you remember seeing indications that Mr. Sacco
13 was checking his credit scores and Experian score card
14 reference?

15 A Yep, I did see that.

16 Q He was paying Liberty Mutual for insurance?

17 A Right.

18 Q Back in May of '07 Mr. Sacco paid a thousand
19 dollars to Mooney Real Estate, do you remember that?

20 A Yes, I believe I did see that.

21 Q You remember any indications that Mr. Sacco was
22 paying his income tax?

23 A Yes.

24 Q He was paying the real estate taxes on the property
25 at 45 Fair Street?

Kelley Molanare - Cross

1894

1 A Correct.

2 Q Do you remember he paid some parking fines down in
3 the city?

4 A Correct.

5 Q Paid for his utilities?

6 A Yes.

7 Q And he was paying for rents to Mr. DiFiori down in
8 the city?

9 A Correct.

10 Q Paying his phone bill?

11 A Yes.

12 Q His car loan?

13 A Yes.

14 Q The Wal-Mart, December 26, 2006 summary, Exhibit
15 76, can you find that on that document, please.

16 A Okay.

17 Q Now that summary is based on a summary of Exhibit
18 75, am I correct?

19 A Yes.

20 Q In Exhibit 75, can you locate the place where that
21 December 26, 2006 Wal-Mart charge appears?

22 A It's right here.

23 Q I'm sorry?

24 A It's right here.

25 Q Can I see it, please? Thank you. That shows an

1 EFT transfer on that date, am I correct?

2 A Correct.

3 Q What does EFT mean?

4 A Electronic funds transfer.

5 Q It's for \$5.12?

6 A Correct.

7 Q It says POS space PUR/PIN space CHK/EFT space

8 TRANS. Is that what it says?

9 A Correct.

10 Q Can you translate that?

11 A Point-of-sale purchase, pin check electronic funds
12 transfer.

13 Q What does that mean?

14 A He made a point-of-sale purchase at Wal-Mart for
15 \$5.12.

16 Q He did; that's your testimony?

17 A He owns the account.

18 Q I understand he owns the account. You came to the
19 conclusion that he made this purchase?

20 A There's nobody else listed on the account.

21 Q Do you see any occasions where people other than
22 the person listed on the account have made purchases with
23 cards?

24 A Yes.

25 Q Does that happen fairly frequently?

Kelley Molanare - Cross

1896

1 A Only if the person's a signer on the account.

2 Q So it's your testimony that if somebody's not a
3 signer on the account, they can't go to a store and use
4 somebody else's credit card?

5 A They can attempt to. I would not --

6 Q It would be illegal.

7 A Exactly.

8 Q But they could do it?

9 A They could do it.

10 Q Other than the fact that nobody other than Mr.
11 Sacco was a signatory on this account, you cannot say that it
12 was in fact Mr. Sacco who made this purchase, am I correct?

13 A It's my testimony that what's reflected in here
14 would be his purchases.

15 Q And that testimony is based upon the fact that only
16 Mr. Sacco is the signatory on the account?

17 A Right.

18 Q What time was that purchase made?

19 A There's not a time on this.

20 Q This record is from Provident Bank that you're
21 looking at, correct?

22 A Correct.

23 Q And this is based upon information that was
24 provided from somebody to Provident Bank?

25 A That's correct.

Kelley Molanare - Cross

1897

1 Q Who provided the information to Provident Bank?

2 A Wal-Mart.

3 Q How do you know that?

4 A That is where the card was used.

5 Q So Wal-Mart's connected directly to Provident Bank
6 or is this information transferred along the way to a
7 different bank and then to Provident Bank?

8 A I don't know the correct sequence, but it's my
9 understanding it goes directly from the point-of-sale
10 terminal to the location of the bank.

11 Q Your understanding is based on what?

12 A Discussion with financial institutions.

13 Q How is that information transferred?

14 A Electronically.

15 Q So your understanding is there's a direct
16 connection between Wal-Mart and Provident Bank -- may I
17 approach -- correct?

18 A Correct.

19 Q This shows that Wal-Mart charged Provident Bank
20 five dollars and change on December 26, 2006, correct?

21 A Correct.

22 Q And from that you conclude that the purchase was
23 made at that time?

24 A Correct.

25 Q Are there delays ever in those electronic funds

Kelley Molanare - Cross

1898

1 transfers?

2 A Yes.

3 Q Exhibit 74 concerning eBay --

4 A Okay.

5 Q -- that shows the last purchase -- did you
6 highlight these things in these summaries?

7 A I did not.

8 Q Who did that?

9 A Mr. Lovric.

10 Q That shows the purchase of a Fuji 1,000 zoom
11 camera?

12 A Correct.

13 Q And that's a 35-millimeter camera?

14 A Yes. That's how it was described in the records.

15 Q 35-millimeter means a film camera, not digital?

16 A Correct.

17 Q I'm going to show you what's been marked for
18 identification as Exhibit S-23.

19 A Okay.

20 Q Can you tell by looking at that document where that
21 picture came from?

22 A No. I have no idea.

23 Q There's some writing on the bottom of that
24 document. Do you see that?

25 A Okay. EBay.

Kelley Molanare - Cross

1899

1 Q Does it appear to you that that document came from
2 eBay?

3 A That's what it appears.

4 Q You did some investigation with respect to eBay, am
5 I correct?

6 A I reviewed the documents from eBay.

7 MR. FISCHER: Well, I'll offer the exhibit.
8 Exhibit S-23 I'll offer.

9 MR. LOVRIC: Could I have a voir dire, Judge?

10 THE COURT: Sure.

11 VOIR DIRE EXAMINATION

12 BY MR. LOVRIC:

13 Q Miss Molanare, do you know what this picture is of?

14 A It appears to be a camera.

15 Q Do you know if this is a picture of a camera which
16 Mr. Sacco purchased?

17 A I have no idea.

18 MR. LOVRIC: I object.

19 MR. FISCHER: I understand these are
20 foundational objections, your Honor.

21 THE COURT: Sounds like it.

22 MR. LOVRIC: There's no evidence that this is
23 the camera or kind of camera. I have no problem if this is
24 the camera. She doesn't know that, I don't know that.

25 THE COURT: Foundational. Do you want to lay

Kelley Molanare - Cross

1900

1 a foundation or hold on it and wait?

2 MR. FISCHER: No, I'll continue, if I may, and
3 try to lay some more foundation.

4 THE COURT: Sure.

5 BY MR. FISCHER:

6 Q Ma'am, the camera that's shown in that summary
7 document that you have from eBay, the last purchase on that
8 summary, I think we've clarified it, was a Fuji 1,000 zoom
9 camera, am I correct?

10 A Yes.

11 Q When you look at Exhibit S-23, can you tell from
12 that picture what kind of a camera that is?

13 A It shows that it is a Fuji 1,000. I couldn't tell
14 if it's film or not film. I'm not a camera person.

15 Q It says zoom?

16 A Yes.

17 MR. FISCHER: I'll again offer the document,
18 your Honor.

19 MR. LOVRIC: I have no idea if that's the
20 camera. None of us do. This witness doesn't know if that's
21 the camera that Mr. Sacco's purchased.

22 THE COURT: I don't think she's been asked
23 that question.

24 MR. LOVRIC: She says she doesn't know that.

25 THE COURT: She said she's not a camera

Kelley Molanare - Cross

1901

1 person. She told us about a couple characteristics that the
2 photo displayed to her. That's the extent I heard. If
3 there's more, maybe Vicky can read it back for me.

4 MR. LOVRIC: My point is, Judge, there's no
5 information as to whether that is the type of camera or not.
6 I don't know if -- what this looks like. I don't know how
7 this piece of paper can be introduced into evidence through
8 this witness.

9 THE COURT: What do you say, Mr. Fischer?

10 MR. FISCHER: There is a foundational issue
11 concerning introduction at this time. I understand it. I
12 still offer the document.

13 THE COURT: Let me ask you this: We do
14 sometimes in cases like this, if you can assure the Court
15 that you're going to connect that document up some way, I can
16 let it in subject to connection.

17 MR. FISCHER: What I'll do, your Honor, is
18 reserve my right to reoffer it when we do.

19 THE COURT: That's fine.

20 MR. FISCHER: Those are all the questions I
21 have. Thank you.

22 THE COURT: Miss Peebles.

23 CROSS-EXAMINATION

24 BY MISS PEEBLES:

25 Q Good morning.

Kelley Molanare - Cross

1902

1 A Good morning.

2 Q Mrs. Molanare, you looked at some bank documents
3 for NBT Bank on an account in the name of Linda O'Connor
4 stemming back from July of '06 I believe through the end of
5 October of '06?

6 A Correct.

7 Q And there was a deposit on Government's Exhibit 116
8 in the amount of \$3,573. Do you see that?

9 A I do.

10 Q Now, there's a subsequent withdrawal of funds right
11 below that the very next day, do you see that?

12 A I do.

13 Q Now, were you ever shown the Western Union receipt
14 from Linda O'Connor to Dean Sacco in that amount of -- total
15 amount of \$1,921.99?

16 A Yes, I was.

17 Q With a wire transfer you just get the cash, it's
18 not required that you deposit it in order for anything to
19 clear, correct?

20 A Exactly, yes.

21 Q So when Mr. Sacco were to receive this money, he
22 wouldn't have to deposit it in order to collect it?

23 A No, he would not.

24 Q In fact, in his bank account records there's no
25 indication that this wire transfer was ever deposited in any

Kelley Molanare - Cross

1903

1 of the accounts that you testified about, correct?

2 A No, there wasn't.

3 Q Now, you testified about a money order in the
4 amount of \$115?

5 A Yes.

6 Q Now a money order has to clear through the bank in
7 order for you to get the money from the bank first, correct?

8 A Yes.

9 Q You have to deposit the money order in order to
10 collect, correct?

11 A It's a cash instrument so it's not necessary it's
12 deposited. He could have received the entire amount in cash
13 if he wanted to.

14 Q But ordinarily when you go to a bank, they require
15 it to clear first?

16 A Yes.

17 Q Now, with regard to the bank records, the -- you
18 also looked at the savings account summary for Mrs. O'Connor,
19 I take it? You testified about that?

20 A Yes.

21 Q You didn't have on there November and December of
22 the savings account in your summary chart, is that fair to
23 say?

24 A I don't believe so. I don't have it in front of me
25 but --

Kelley Molanare - Cross

1904

1 Q Did you see on Defense O-11 in the account of Linda
2 O'Connor there's a cash withdrawal on November 1 in the
3 amount of \$600? Do you recall seeing that?

4 A I don't recall seeing that.

5 Q That's not reflected on your summary chart?

6 A If I did not see it, it's not on my summary chart.

7 MR. LOVRIC: What document is that, Judge? If
8 I can ask the document that's on -- the document that was
9 just on. I was asking for the number of the exhibit.

10 MISS PEEBLES: O-11.

11 MR. LOVRIC: Is that in evidence?

12 MISS PEEBLES: Yes, it is.

13 BY MISS PEEBLES:

14 Q You testified as well for her savings account for
15 October of '06, do you remember that?

16 A Yes.

17 Q I'm going to hand you what's been marked as O-64
18 and ask if you've ever seen this document. If you can
19 identify it.

20 A Yes, I have seen this. It is a HUD check that was
21 issued to Linda O'Connor.

22 Q Not a HUD check.

23 A I'm sorry. Check for Department of Labor Family
24 Grant Program.

25 Q And you've seen that document before?

Kelley Molanare - Cross

1905

1 A I have. Briefly.

2 MISS PEEBLES: Your Honor, I would like to
3 offer this document into evidence at this time, Defense
4 Exhibit O-64.

5 MR. FISCHER: No objection.

6 THE COURT: Mr. Fischer?

7 MR. FISCHER: No objection.

8 THE COURT: Receive Defendant's O-64 in
9 evidence.

10 BY MISS PEEBLES:

11 Q Now, looking at this overhead, this is a check that
12 was issued to Mrs. O'Connor in July for \$5,493.51?

13 A Yes.

14 Q Now, I'm going to hand you what's been marked as
15 Defense Exhibit O-65 and ask if you've seen this document.

16 A Yes, I have, and it's a -- it's a check from a
17 grant program response or by the government, Department of
18 Labor for \$3,380 to Linda O'Connor.

19 MISS PEEBLES: I'm going to offer Defense
20 Exhibit O-65.

21 MR. LOVRIC: No objection.

22 MR. FISCHER: No objection.

23 THE COURT: Receive Defendant's O-65 in
24 evidence.

Kelley Molanare - Cross

1906

1 BY MISS PEEBLES:

2 Q So this is a check that Mrs. O'Connor received in
3 September, is that correct?

4 A Yes, it is.

5 Q Now, looking at the -- I'm going to hand you now
6 what's been marked as Defense Exhibit O-63 and ask if you've
7 seen those documents.

8 A Yes, I have seen those.

9 MISS PEEBLES: Your Honor, at this time I'd
10 also like to offer Defense Exhibit O-63.

11 MR. LOVRIC: No objection.

12 MR. FISCHER: No objection.

13 THE COURT: Receive Defendant's O-63 in
14 evidence.

15 BY MISS PEEBLES:

16 Q Now, looking at this document, it appears that
17 there is a \$600 cash withdrawal on September 21, that's
18 reflected on there, is that correct?

19 A That's correct.

20 Q I'm going to show you Government Exhibit 121, page
21 2. It indicates that on April 4 of 2005 there was a check
22 that was drafted or written to Mr. George Lang, do you see
23 that on there?

24 A I do.

25 Q And then on August of '05 it appears that there's a

Kelley Molanare - Cross

1907

1 check written to a Renee Lang in the amount of \$100, that's
2 reflected on this chart?

3 A That's correct.

4 Q Now, you testified about a Social Security check
5 that Mrs. O'Connor receives, do you recall that testimony?

6 A It's Supplemental Security Income.

7 Q And it's deposited on the first of the month, it's
8 reflected in her bank statements on the first of the month?

9 A Correct.

10 Q Did you go back any further with regard to
11 Mrs. O'Connor's banking accounts from beyond 2004?

12 A I don't believe we did.

13 Q You didn't see any records from 2000 or 2001? If I
14 showed you documents, may it refresh your recollection?

15 A Yes. Would you show me them.

16 Q I'm going to hand you what's been marked as Defense
17 Exhibit 66 and ask if you've ever seen that document.

18 A Yes, I have. It's a savings account for Linda
19 O'Connor.

20 Q And I'm going to hand you what's been marked as
21 Defense Exhibit 67. Did you ever see that before?

22 THE COURT: O-66 and O-67.

23 MISS PEEBLES: Yes. Sorry.

24 A What's the account number? Yeah, it's just an
25 earlier period.

Kelley Molanare - Cross

1908

1 Q It's different -- same account, different periods?

2 A Correct.

3 Q '01 and 2000?

4 A Yes.

5 Q It doesn't look like Mrs. O'Connor had money back
6 then either, based on these records, is that fair to say?

7 A That's correct.

8 MISS PEEBLES: Nothing further. Thank you.

9 THE COURT: Mr. Lovric.

10 MR. LOVRIC: Miss Molanare, I just have one
11 area I wanted to clarify, or if you could clarify. I'm
12 sorry.

13 REDIRECT EXAMINATION

14 BY MR. LOVRIC:

15 Q Mr. Fischer talked with you about that December 26,
16 2006 EFT. Do you remember that?

17 A Yes.

18 Q What does EFT stand for?

19 A Electronic funds transfer.

20 Q If a person with Mr. Sacco's bank card went to that
21 Wal-Mart on December 26 of '06 and they bought something for
22 \$5.12 with that bank card, what would they have to do in
23 order to do an EFT purchase?

24 A They would have to submit a PIN, punch in a
25 four-digit code in order for it to go through.

Kelley Molanare - Redirect

1909

1 Q Okay. And in your experience, do stores have a
2 little machine where you swipe your bank card through?

3 A Yes.

4 Q And then there's a key pad?

5 A That's correct.

6 Q And you have to indicate your --

7 A Secret pass code.

8 Q -- secret password, your PIN number, usually -- how
9 many digits is that, usually?

10 A It's usually four.

11 Q And then is there like a split second while the
12 machine checks to see if there's a balance and to approve the
13 transaction?

14 A That's correct.

15 Q And is that what EFT stands for?

16 A Yes, it does.

17 Q And then Mr. Fischer asked you about point-of-sale
18 purchase. What does that mean with respect to that purchase?

19 A That's the location of where the sale took place.

20 Q So, a person was physically present there to make
21 this purchase, right?

22 A That's correct.

23 Q And is there any indication in Mr. Sacco's account,
24 that Provident Bank account that that purchase relates to,
25 that he ever reported this transaction as a fraud or that

Kelley Molanare - Recross

1910

1 somebody had used this PIN?

2 A Absolutely not.

3 MR. LOVRIC: That's all I have.

4 THE COURT: Mr. Fischer?

5 MR. FISCHER: Thank you, your Honor. Yes
6 please.

7 RECROSS-EXAMINATION

8 BY MR. FISCHER:

9 Q Miss Molanare, the banking business in electronic
10 information doesn't remain static, it's changed through the
11 years, hasn't it?

12 A Absolutely.

13 Q It's better now than it was?

14 A Absolutely.

15 Q And in fact, for example, M&T Bank now has a way to
16 verify instantly whether funds are in a particular place and
17 transfer funds immediately, am I correct?

18 A Absolutely.

19 Q There was a time not too long ago when that
20 couldn't be done, am I correct?

21 A That would be accurate.

22 Q December 26, 2006, at Wal-Mart. Do you know
23 whether Wal-Mart had a high or low volume of electronic
24 transfers at that time?

25 A I'd suspect they were high.

Kelley Molanare - Recross

1911

1 Q Does the volume of transfers affect how quickly
2 information is conveyed from institution to institution?

3 A I would say yes.

4 MR. FISCHER: Those are all the questions I
5 have. Thank you.

6 THE COURT: Miss Peebles.

7 MISS PEEBLES: One.

8 RECROSS-EXAMINATION

9 BY MISS PEEBLES:

10 Q Mrs. Molanare, I'm going to hand you what I've
11 marked as Defense Exhibit O-69 and ask if you've ever seen
12 this document.

13 A Yes, I have. It's a check to Linda O'Connor from
14 Delaware Opportunities for \$2,070.20.

15 MISS PEEBLES: Your Honor, at this time I'd
16 like to offer Defense Exhibit O-69.

17 MR. LOVRIC: Judge, even though it's not
18 subject to the recross, I don't have any objection.

19 MISS PEEBLES: No objection.

20 MR. FISCHER: No objection.

21 THE COURT: Receive Defendant's O-69 in
22 evidence.

23 BY MISS PEEBLES:

24 Q So this is a check that Mrs. O'Connor received in
25 January, January 26, 2007?

Kelley Molanare - Recross

1912

1 A That's correct.

2 MISS PEEBLES: No further questions.

3 THE COURT: Mr. Lovric?

4 MR. LOVRIC: No questions, Judge.

5 MR. FISCHER: Nothing further. Thank you.

6 THE COURT: Okay. Thank you, Agent Molanare.

7 You may step down, ma'am.

8 (Witness excused)

9 MR. LOVRIC: Judge, the next witness is Andrea
10 Lester.

11 THE COURT: Okay.

12 MR. LOVRIC: She's on her way down.

13 THE CLERK: Ma'am, please state your name for
14 the record.

15 THE WITNESS: Andrea Lester, L-E-S-T-E-R.

16

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18

19

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25

Andrea Lester - Direct

1913

1 A N D R E A L E S T E R, having been called as a witness,
2 being duly sworn, testified as follows:

3 THE COURT: Okay. Mr. Lovric.

4 DIRECT EXAMINATION

5 BY MR. LOVRIC:

6 Q Good morning, Miss Lester.

7 A Good morning.

8 Q Miss Lester, for the members of the jury, could you
9 please tell them again your full name and tell us where
10 you're employed.

11 A My name is Andrea Lester, and I'm employed with the
12 New York State Police Forensic Investigation Center in
13 Albany, New York.

14 Q And how long have you been employed with the New
15 York State Police Investigation Center?

16 A About eight years now.

17 Q And in what section of that laboratory and that
18 unit do you work?

19 A I am in the biological sciences section.

20 Q And what is your title or job description? How
21 would you characterize that?

22 A I'm a forensic scientist.

23 Q And as a forensic scientist, Miss Lester, can you
24 tell the members of the jury basically what you do and what
25 kind of work does that entail?

Andrea Lester - Direct

1914

1 A What I do is perform serological examination on
2 items of evidence that comes into the laboratory, which
3 consists of identifying any biological material that is
4 present on the item. I preserve it and also process it
5 through DNA and determine a profile on that item of evidence
6 as well as controls that are submitted to the lab.

7 Q And what kind of background do you have in order to
8 perform these duties as a forensic scientist?

9 A I have a degree in anthropology from the University
10 of Rhode Island, of which I received in May of 2000. During
11 my senior year there I interned at Rhode Island Department of
12 Health in the forensic crime lab section where I assisted
13 forensic sciences with processing case work. And in July of
14 2000 I received a job with the New York State Police Forensic
15 Investigation Center as a senior laboratory technician and
16 where I underwent approximately a year of training in DNA
17 extraction, quantification and amplification, upon which
18 completing that, I then was assigned to a forensic scientist
19 to assist him in doing those duties on items of evidence.
20 After about six months of working as an SLT, I then was
21 promoted to forensic scientist, where I underwent another
22 eight months of training specifically in serological
23 examinations, where I was taught how to identify, separate
24 the samples and preserve them for DNA analysis as well as
25 trace evidence and hair analysis. After working as a

Andrea Lester - Direct

1915

1 serologist for about three years, I then became trained in
2 DNA analysis, where I was able to analyze DNA and interpret
3 the results and report them for court purposes.

4 On top of all of that training, I have to stay
5 proficient in the field, which means I have to have
6 continuing education as well as partake in class work with
7 molecular biology, biochemistry, DNA -- or, excuse me --
8 genetics and statistics.

9 Q Now, Miss Lester, while working with the New York
10 State Police Forensic Investigation Center as a forensic
11 scientist, during the course of your career have you in fact
12 performed DNA testing and analysis on things that were
13 submitted to the laboratory?

14 A Yes. Hundreds of items I've worked with.

15 Q And in connection with those analyses and testing
16 that you performed, have you then prepared reports of your
17 findings and distributed those finding reports to either
18 courts or to law enforcement agencies?

19 A Yes, I have.

20 Q And in connection with your work have you testified
21 in any proceedings as to your testing and analysis?

22 A Yes. In multiple areas around the entire state of
23 New York.

24 Q Miss Lester, the laboratory that you work at, is
25 that laboratory accredited?

Andrea Lester - Direct

1916

1 A Yes, it is.

2 Q What does that mean when we say accredited?

3 A Accredited means we have received certification,
4 allow us to take in evidence to the laboratory, how we
5 process our evidence, how we conduct our analysis and report
6 it so that it's considered worthy to be in the courtroom and
7 that it's allowed for you to see as well as for us to testify
8 on.

9 Q And at the laboratory that you just described for
10 us, how does evidence or materials get submitted to the
11 laboratory?

12 A Our laboratory is very large. We have a section in
13 the laboratory called the evidence receiving section. That
14 section brings in -- or if an agency drops off evidence
15 there, whether it's UPS or specific agencies will bring the
16 evidence within that section. The individual cases will
17 receive a case number unique to that case. They will be
18 given a bar code, sort of what you see in a supermarket, that
19 is only on that item, identifying that item to be part of
20 that particular case number. Within the evidence receiving
21 section there are four levels of a vault that's locked, very
22 similar to a bank vault. In that vault are different
23 locations, depending on the type of evidence. If it's drug
24 analysis evidence that comes in, it goes into one location.
25 If it's biological evidence, then it goes into either a

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1 refrigeration or freezer section within that vault, and only
2 the people who have access to the vault are the evidence
3 receiving technicians that are within there and a couple of
4 higher-ranking people within the laboratory. I do not have
5 access to that vault. I have to go to the vault myself. I
6 have a bar code associated with my name with a specific
7 password, and the evidence is transferred to me through that
8 bar code and through that password.

9 Q And at the point in time when you are ready to
10 examine a piece of evidence then, you've indicated that you
11 would go to this vault and obtain or take this evidence out?

12 A An evidence clerk would actually transfer the
13 evidence into my custody.

14 Q And then where do you perform your work and testing
15 and analysis on any piece of evidence?

16 A I can either work at a bench designated within my
17 section or we have evidence examination rooms that are under
18 lock and key.

19 Q And when evidence arrives at the laboratory and is
20 placed into the vault when it first arrives, is that evidence
21 item sealed?

22 A Yes, it has to be in order to be submitted to the
23 lab.

24 Q So for example, if an item came to the lab that was
25 not sealed or did not have a sealing, would the lab accept an

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1 item like that?

2 A Let me define what sealed means. It has to contain
3 tape that completely seals the item, no way of opening it up,
4 and has the initials and date of the person collecting the
5 item or the person submitting the evidence.

6 Q Miss Lester, I would like to talk about a test and
7 an analysis, an examination that you performed on a condom
8 that was sent to the laboratory in connection with a person
9 named Dean Sacco. Do you recall working and performing
10 analysis on the condom that I just mentioned?

11 A Yes, I did.

12 Q And did you perform certain tests and certain
13 analyses of this condom that were sent to your lab?

14 A Yes.

15 Q And I'd like to talk a little bit about what you
16 did. Can you describe for the members of the jury, with
17 respect to this condom that we're talking about now, what
18 were the examinations or tests and analyses that you
19 performed. Can you explain that for the members of the jury.

20 A Sure. The initial examination I conducted on this
21 condom was the initial serological examination. We're
22 identifying any possible bodily fluids that are present.
23 Upon opening up the item, noting the contents that were
24 within that item, I noted that it appeared to be a used
25 condom. I noted any possible stains that I'd seen on the

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1 outside, slight dark reddish staining on the outside of the
2 condom. I -- then I took sterile swabs and swabbed the
3 outside of the condom individually from the inside of the
4 condom to try and preserve any bodily fluids that are present
5 on both the inside and outside, completely separate from each
6 other. On those swabs now I've transferred some of that
7 possible bodily fluids onto the swabs. I then performed the
8 analysis on the swabs. So I tested those swabs for the
9 presence of blood, of which I was able to determine that
10 there was a presumptive screening test for blood and that it
11 was positive. Also determined if there was any seminal fluid
12 present on either of those swabs. I was able to determine
13 that within the condom I found seminal fluid using
14 prostate-specific antigen analysis.

15 Q Just to maybe expand a little bit, you did
16 swabbings on the outside of the condom?

17 A Yes.

18 Q And did you also do swabbings on the inside of the
19 condom?

20 A Yes.

21 Q And the positive tests for blood was on where,
22 which part of the condom?

23 A For the presumptive screening test, the majority of
24 it was on the outside. There was a slight speckling reaction
25 of the chemical on the inside of the condom from the swabs.

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1 Q Okay. And then the -- you indicated the term that
2 you used for the presence of seminal fluid was where?

3 A From the inside of the condom it came up,
4 prostate-specific antigen analysis positive, meaning I could
5 not identify sperm but in seminal fluid there is not only
6 just sperm heads you'll find, and the PSA or
7 prostate-specific antigen analysis determines when there's
8 presence of seminal fluid with the absence of sperm.

9 Q Okay. I'd like to just have you talk briefly and
10 describe for the members of the jury what DNA is.

11 A DNA stands for deoxyribonucleic acid. It's a large
12 molecule with every nucleated cell of your body. It contains
13 all the genetic material that makes who you are. It's
14 hereditary material as well. So you have -- receive half
15 from your mother and half from your father.

16 Q And where is DNA found in the human body?

17 A In nucleated cells.

18 Q What does that mean?

19 A It means there's -- a majority of your cells in
20 your body have a nucleus within them. The only cells that do
21 not contain a nucleus are red blood cells.

22 Q For example, sperm; would sperm have DNA?

23 A Yes, it does.

24 Q Blood, other than red blood cells?

25 A Yes, there's also white blood cells contained in

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1 your blood, so that's able -- where we would extract DNA
2 from.

3 Q Skin?

4 A Yes.

5 Q How about the inside of one's mouth?

6 A Absolutely. That's a diagnostic source for DNA.

7 Q And is DNA in all cells the same or different? How
8 would you describe that?

9 A It's all the same.

10 Q With respect to DNA, do any two people have the
11 same DNA profile?

12 A The only two people that have the same exact
13 genetic profile are identical twins.

14 Q Okay. How about relatives, mother/daughter, for
15 example?

16 A Not exact, no. You might share some alleles and
17 hereditary, but not identical, no.

18 Q Now are there tests that detect a person's genetic
19 type or genetic type, as we call it?

20 A Yes. There are many out there. We used what's
21 known as PCR of STR regions or polymerase chain reaction of
22 short tandem repeat regions of the DNA.

23 Q What tests -- with respect to this condom that
24 we're talking about, what tests did you perform with respect
25 to doing testing and analysis for DNA?

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1 A We utilized STRs.

2 Q And what is -- I know you mentioned what an STR is.
3 But how is it and what do you go about doing in order to do
4 testing on this condom based on the STR testing?

5 A The swabs that I mentioned before that I took from
6 both the outside and the inside of the condom go through an
7 extraction process. Basically I'll take a small amount of
8 that swab and place it into a tube, where it will undergo
9 initial extraction or removing any of the possible bodily
10 fluids from that swab and separating it from the substrate.
11 It then breaks those cells open in order to get into the DNA
12 or nucleus of the cell to pull out the genetic material.
13 Once it has gone through that extraction, it is then
14 quantified, which determines the amount of DNA present within
15 that sample. Once we've determined that, we amplify it or
16 molecularly xerox it to make DNA a little more robust so we
17 can find an easier location of the DNA we're looking at. It
18 is processed through a genetic analyzer, where the
19 information that the software gives me and genetic analyzer
20 gives me, I'm able to determine the profile present on that
21 item of evidence.

22 Q Okay. When you say profile, with respect to the
23 item of evidence, what does profile mean? What does that
24 signify?

25 A Profile is sort of like your name. It's what makes

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1 you who you are. It's very unique to you as opposed to
2 anyone else. It makes you exactly who you are, your skin
3 color with everything else, but the profile we're looking at
4 is your unique DNA.

5 Q And what is the reason or purpose for performing
6 DNA analysis in this particular case on that condom, the
7 inside and outside of the condom?

8 A We perform DNA analysis to determine a source of
9 items of evidence, and we compare those items of evidence
10 with the profile developed from those items of evidence to
11 controlled samples. Our samples are -- we know exactly who
12 donated that.

13 Q Now, in conducting these tests, is there a term
14 called an allele that describes certain testing and analyses
15 that you eventually performed on the DNA found on the condom?

16 A Yes. Let me explain what a gene is first and then
17 I'll transition into allele. It makes it a little more
18 easier to explain. A gene, I'm sure you all have heard of,
19 is a specific location on the genetic molecule that has a
20 specific function. For instance, your hair color. Within
21 that gene -- every individual has that gene. Every
22 individual has hair, for the most part, gene. Now, within
23 that gene, though, there are variations which make you have
24 the color hair you have from someone else. It's those
25 variations of the same gene that we refer to as alleles.

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1 Q And alleles in relation to genes are what again?

2 A Alleles are an alternate form of a gene. It's a
3 means of showing what the variations are, and we represent
4 them as numbers.

5 Q Okay. Now, Miss Lester, what I'd like to do next
6 is, I'd like to look at --

7 MR. LOVRIC: The next number, Judge?

8 THE COURT: We had 121.

9 MR. LOVRIC: It will be Government's 122.

10 Q What I'd like to do next, Miss Lester, I'm going to
11 show you Government's Exhibit 122.

12 If I can show you Government Exhibit 122, if you
13 can take a look at that to yourself. Okay?

14 A M-m h-m-m.

15 Q Do you recognize what that is, Government Exhibit
16 122?

17 A Yes. This is the first report I issued in this
18 case.

19 Q And Exhibit 122, the report, does that show your --
20 summarily your analysis and then more importantly your
21 findings as to your examination and testing of that condom
22 relating to the Dean Sacco matter?

23 A Yes. On the first page here you'll see it shows
24 all my examination results, our serological examination
25 results of the individual swabs that I took from the condom,

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1 and also my DNA results from my analysis, noted here in this
2 chart.

3 MR. LOVRIC: Judge, I would offer Exhibit
4 Number 122 into evidence.

5 MISS PEEBLES: No objection.

6 MR. FISCHER: No objection.

7 THE COURT: Miss Peebles?

8 MISS PEEBLES: No objection, your Honor.

9 THE COURT: Receive Government's 122 in
10 evidence.

11 BY MR. LOVRIC:

12 Q Miss Lester, what I'd like to do is put this on the
13 monitor and then ask you to tell us and tell the jury
14 essentially what is reflected in this report, okay?

15 A Yes.

16 Q Okay.

17 A Okay. Here is again the first report issued in
18 this case dated March 31 of 2008, and you'll see up here in
19 the right-hand corner the unique lab case number, 08SL00293.
20 That is given to this case once submitted to the laboratory.
21 You'll see the item number 1 is the condom, and A and B are
22 the swabbings I took of the outside of the condom and the
23 examination results to the right of that that I performed.
24 Again, presumptive screening test for blood was positive.
25 Through the seminal fluid analysis I determined first that

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1 there was no sperm present on the outside of the condom that
2 I saw. And that it was negative for prostate-specific
3 antigen analysis. However, to still get a profile, we still
4 submitted it for DNA analysis because it was blood positive.

5 Now, the next part, you'll see items C through D,
6 swabbings of the inside of the condom. Again, to the right
7 are examination results, where it is positive for presumptive
8 screening for blood, and sperm negative, I did not note any
9 sperm, but I did continue and found it was positive for
10 prostate-specific antigen analysis consistent with human
11 seminal fluid.

12 Q What does that mean, positive for antigen test
13 results?

14 A It means that there was seminal fluid present on
15 the inside of the condom with the absence of sperm.

16 Q Okay. Now, seminal fluid comes from where?

17 A It comes from the penis, it's excreted from the
18 penis through the testes.

19 Q Is it fair to say it's the fluid that, when a male
20 ejaculates, come out of the penis and within that fluid there
21 may or may not be sperm?

22 A Yes.

23 Q For example, if a male has a vasectomy, would there
24 be sperm in the seminal fluid?

25 A No.

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1 Q Is it possible that there isn't sperm for some
2 other reason, yet there's seminal fluids?

3 A Right. There could be some sperm present, but as
4 far as having enough for me to be able to see, that can take
5 place, that's why we continue on with the prostate-specific
6 antigen analysis, to determine there is still seminal fluid
7 there even if I did not note there was sperm.

8 Now, in this case, I don't know if my notes are
9 admitted or not. I did note, when looking at the slides that
10 I generated from these swabs from the inside of the condom,
11 there were a lot of yeast cells, so with knowing that, it was
12 a good likelihood that sperm cells, if present, would have
13 been broken down through -- just through age and any bacteria
14 and whatever that's there.

15 Q Okay. I'd like to flip to the second page of your
16 report. Can you see that, Miss Lester?

17 A Yes.

18 Q Can you describe for the jury what the second page
19 reflects in connection with your testing and analysis.

20 A Sure. I'll start here at the top of the bank.
21 Indicating that the items 1A through B, swabbings of the
22 outside of the condom, and items 1C through D, swabbings of
23 the inside of the condom, were processed for DNA analysis.

24 The second half here is a chart that reflects my
25 results of the DNA found on these items.

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1 Now, to better explain this, referring to DNA,
2 think of DNA as a book. Okay. Over here in the far
3 left-hand column, the column that's titled Locus, you have 14
4 different rows. Now, if you think of those rows as pages of
5 that book, the 14 rows down here stating Amelogenin is the
6 page that refers to the sex chromosome, or the section Gene,
7 again, X refers to you being a female, XY is for males. If
8 we start here at the top row, treating it as a page of a book
9 of DNA, at D3, when we're scanning through that page of the
10 DNA, we're looking for a specific key four-letter word, when
11 you see example of fish. Once we hit that key four-letter
12 word, we then count any tandemly repeated fish, the word fish
13 right after another. This is where STR comes from. The
14 Short Tandem Repeat. Once we have counted all of those, we
15 then represent it as an allele or this number here.

16 Now, because you receive half your DNA from your
17 mother and half from your father, we look at two different
18 copies of the book. Again, going to the second copy, we're
19 going to the first page, again, scanning to look for that
20 specific key word again, counting how many repeats of
21 tandemly repeated words of that one word, counting them and
22 referring to them as an allele or a number. Now, in this
23 case, for items 1A through B, the swabbings of the outside of
24 the condom, in the first page D3, it shows one number, 18.
25 That is because it is considered a homozygous allele, meaning

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1 that the individual contributing to this profile at D3 or
2 page 1 received, from both copies of that book, the same
3 number of repeats. Just to stay conservative, we only list
4 it as one number.

5 To better explain that, if you go to the second
6 page of the DNA and which is called VWA, you'll see two
7 different numbers there. That means that in the first copy
8 of the book, there were 16 repeats of that word fish and the
9 second copy there were 18 repeats of the word fish, meaning
10 that at that page, the person's profile is a 16/18. Now
11 looking at all of those 13 different pages and the 14th page
12 being Amelogenin, that profile developed or all those unique
13 alleles present at those different pages makes this profile
14 unique.

15 Q And the profile in that first column listed under
16 items 1A and 1B, that profile is, if I understand you
17 correctly, for the DNA that you found from the swabbings on
18 the outside of the condom?

19 A Correct. And it's a single-source profile.

20 Q What does that mean, it's a single-source profile?

21 A Single-source profile, meaning that there are no
22 more than two alleles or two repeating numbers present in
23 that profile at any locations or any pages of the DNA.

24 If I can move on to items 1C through D, you'll see
25 for this item there are two different columns. There's

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1 what's noted as a sperm fraction and a nonsperm fraction.
2 Now this is the profile developed from the inside of the
3 condom, the swabbings taken from the inside of the condom.
4 Because I have two different fractions here, we back up to
5 how we do our extractions when referring to anything with
6 seminal fluid. We perform what's called a differential
7 extraction. This is different from our other types of
8 extraction when we know seminal fluid is involved. The best
9 way to look at it is, think of a large box with really
10 fragile glass Christmas bulbs and golf balls. During that
11 extraction process, think really shaking that box as hard as
12 you can. When you open the box, you will expect the glass
13 bulbs to be broken and fall to the bottom of the box but
14 what's still intact are the golf balls. Those golf balls
15 represent sperm or seminal fluid. Now, we profile separate
16 sperm fraction versus nonsperm fraction or any skin cells
17 that are present within that item. That's why here you see
18 two separate columns, one representing sperm fraction, one
19 representing nonsperm fraction. Looking at these fractions
20 as a whole, I refer to these as mixture profiles. The reason
21 why is because if you look at the page marked D21 S11.

22 Q I'm going to put a green arrow -- oh, you did.

23 A That one left arrow is pointing to D21 S11. Scan
24 over to item 1C through 2, sperm fractions inside of the
25 condom, you'll note there are three different numbers or

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1 three different alleles. There's a 28, 32, and a 32.2. That
2 means that there are more than one contributor to that
3 profile, because there's more than two alleles present.
4 You'll also see at other location D18, again, three alleles,
5 indicating more than one contributor to this profile.

6 Q Okay. Now, just to make sure that I understand
7 this, Miss Lester, the profile of the person who left the DNA
8 on the outside of the condom, which is the first column --

9 A Yes.

10 Q -- does that testing and analysis and results
11 indicate to you whether one or more persons left the DNA
12 material on the outside of the condom?

13 A That is a single source or one person contributing
14 to that profile on the outside of the condom.

15 Q Okay. And then looking at the second and third
16 columns, what -- what does that testing and analysis show as
17 far as the number of persons that left any portions of their
18 DNA on the inside of the condom?

19 A Because it's of -- some locations of this profile
20 or pages of the DNA book there are more than two alleles or
21 two numbers present, that means that there is at least -- or
22 there's more than one contributor to this profile, meaning
23 that there's at least two individuals contributing to this
24 profile.

25 Q Okay. And with respect to column 1, the outside of

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1 the condom, are you able to tell from the Amelogenin that you
2 indicated whether that person who left that DNA on the
3 outside of the condom, what their sex was as far as that
4 person?

5 A Based on the Amelogenin or the 14th page down
6 here, the single-source profile contributed to the outside of
7 the condom is a female profile because of that X. The
8 mixture profile, the sperm fraction and nonsperm fraction,
9 had also a male contributor because of the Amelogenin,
10 there's an X and a Y.

11 Q Okay. So the mixture on the inside indicates that
12 there was at least one female and at least one male
13 contributors to the DNA on the inside of the condom?

14 A Correct.

15 THE COURT: Okay. Ladies and gentlemen, we're
16 going to break for lunch, and immediately after lunch we're
17 going to have a test. Get ready to respond to that.

18 (Lunch break taken)

19 (Jury present)

20 THE COURT: Okay. Mr. Lovric.

21 BY MR. LOVRIC:

22 Q Good afternoon, Miss Lester.

23 A Hello.

24 Q When we left off before lunch, I had up on the
25 screen Government Exhibit 122 in evidence. I'm going to put

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1 that up.

2 A Okay.

3 Q You can see that?

4 A Yes.

5 Q Okay. I'd just like to continue where we left off.

6 I think one of the last things I covered with you is that
7 based on your testing and analysis, the profiling column 1,
8 which is for items 1A and 1B swabbing outside the condom, you
9 indicated that profile is of a single female donor.

10 A Correct.

11 Q And then I was going over to column 2, and column 2
12 and column 3, which is relative to swabbings of the inside of
13 the condom, I think I covered with you -- you indicated that
14 that indicated that there were more than one donor of DNA for
15 the material found on the inside of the condom?

16 A Correct.

17 Q And then my next question to you is: With respect
18 to the material found on the inside of the condom, to the
19 more than one donor, were you able to determine from your
20 analysis and testing whether the more than one donor, more
21 than one donors were male, female or a combination?

22 A Based on the first report that I looked at, it's a
23 combination of a male and a female, or at least I can't
24 exclude a male. There is a male contributor in this profile
25 because of the XY at the Amelogenin.

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1 Q So the substance on the inside of the condom
2 indicates that there was a male contributor and there was
3 also a female contributor?

4 A Correct.

5 Q Now, I'll turn to page 3 of the report. And
6 specifically in the first paragraph, you indicate what you
7 just told us about, that items 1A and 1B are consistent with
8 DNA from a single unknown female donor?

9 A Correct.

10 Q And then paragraph 2, you state -- and I'm reading
11 from the report: "In relevant part, swabbings of the inside
12 of the condom - sperm and nonsperm fractions - are consistent
13 with DNA from Jane Doe and admixed with DNA at least 0
14 additional donor, at least one of which is male." What does
15 that mean when you're saying that?

16 A When you look at the single-source female donor
17 contributing to the outside of the condom -- because when I
18 first wrote this report I didn't have any controls and I had
19 that single-source profile, and I named it Jane Doe because I
20 don't know whose it is. I used that to compare with the
21 profile present in the mixture profiles. So I was able to
22 establish that the alleles present in the single-source
23 profile of the swabbings from the outside of the condom at
24 those different pages that I talked about earlier in
25 association with the mixture profiles, I could conclude that

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1 they were consistent with this Jane Doe or the female
2 contributing the initial profile and mixed with an additional
3 person. And because of the Amelogenin, because there is a Y
4 present, it has to be a male contributing to the other part
5 of that profile.

6 Q Okay. So the female part contributor on the inside
7 of the condom is consistent with the female that you
8 identified on the outside of the condom profile?

9 A Correct.

10 Q Now, at some point after you completed your testing
11 and analysis and actually prepared the report we just read,
12 Exhibit 122, did the lab where you work and then you
13 particularly, did you receive and analyze a female sample
14 taken from a person named Shannon O'Connor, her DNA taken in
15 what we call a buccal swab?

16 A Yes. A known control from this individual was
17 submitted to the laboratory for comparison with the first
18 report.

19 Q Okay. And did you perform testing and analysis on
20 that known control swabbings of Shannon O'Connor?

21 A Yes, I did. The exact same type of extraction.

22 Q Okay. Now, I just want to make sure I understand,
23 Miss Lester. At the time that you conducted your
24 examinations and testing on the condom, as you described for
25 us up until this point in time, at that time did the lab even

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1 have Shannon O'Connor's swabbings at the lab at that time?

2 A No. Not at all.

3 Q It had not even arrived at the lab?

4 A No.

5 Q And is it correct to say that her known swabbings
6 arrived at the lab after you had finished all of your testing
7 on the condom?

8 A Yes.

9 Q Now, I'd like to show you what's marked as
10 Government Exhibit 123.

11 MISS PEEBLES: No objection.

12 MR. FISCHER: Thank you.

13 Q Miss Lester, if you could take a look at Exhibit
14 123 and just tell us if you recognize that and what is it.

15 A This is the second report I generated after
16 receiving the controlled swab from Shannon O'Connor.

17 Q And does that report, Exhibit 123, relate to your
18 testing and analysis of the known DNA samples sent to your
19 lab and then your comparing those results to the results of
20 the condom testing that you just testified about?

21 A Yes.

22 MR. LOVRIC: I would offer Government Exhibit
23 123 into evidence.

24 MISS PEEBLES: No objection.

25 MR. FISCHER: May I just briefly voir dire,

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1 your Honor?

2 THE COURT: Sure.

3 VOIR DIRE EXAMINATION

4 BY MR. FISCHER:

5 Q Miss Lester, that report is dated what?

6 A This report is dated April 9 of 2008.

7 Q That's a supplemental report?

8 A Yes, it is.

9 Q That contains the information concerning the DNA
10 that you extracted from the condom?

11 A Correct.

12 Q With a comparison of the DNA taken from the swab
13 from Shannon O'Connor?

14 A Correct.

15 Q And that's what it contains.

16 A Yeah.

17 MR. FISCHER: No objection. Thank you.

18 THE COURT: We'll receive Government's 123 in
19 evidence.

20 BY MR. LOVRIC:

21 Q Miss Lester, I'm going to put on the monitor
22 Exhibit 123, the first page. Can you see that?

23 A Yes.

24 Q And can you just very briefly tell the members of
25 the jury what's contained in the items and the examination

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1 results, what does that pertain to?

2 A Sure. Again, let me just start -- again, you see
3 the top right date, April 9, 2008, and the lab case number,
4 08SL00293, so you know it's associated with the same case
5 that we previously talked about in my report. Scroll down,
6 and item 2 is a New York State DNA control buccal kit. What
7 a buccal is, it's a swab that looks similar to a comb that
8 has a little bit of sharp edges, and it scrapes the inside of
9 a person's mouth. This is because you have a lot of cells
10 within the inside of your mouth, so it's easier to produce a
11 control sample from the individual knowing you're going to
12 get a very good sample. So again, item 2 is a buccal kit
13 from this individual Shannon O'Connor, and item A is
14 controlled buccal swab, and I used that for DNA purposes.
15 The other swab also contained in that kit, I did not do an
16 examination on because they're collected from the same
17 individual and I didn't need the second swab to perform DNA
18 analysis on.

19 Q Okay. That second swab was sort of backup if you
20 need to do additional testing?

21 A Yes.

22 Q Now, you testified earlier about the DNA testing
23 that you conducted on the condom once you swabbed the outside
24 and the inside. Is the actual DNA testing that's performed
25 on this buccal swab of Shannon O'Connor, is it the same kind

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1 of procedure essentially?

2 A Yes. It's the same technology, same process we use
3 on evidentiary samples. We subject the control samples to
4 the same type.

5 Q Now, after you performed that testing and analysis
6 on the buccal swab taken from Shannon O'Connor, did you -- as
7 you described the profile that you generated for the condom
8 exterior, did you then quantify the profile for Shannon
9 O'Connor's buccal swab?

10 A I was able to develop a profile from her buccal
11 swab, yes.

12 Q Okay. If we take a look at column 1, which is
13 labeled item 2A, what does that column show on this page 2 of
14 Exhibit 123?

15 A The column listed as item 2A, control buccal swab
16 from Shannon O'Connor, here yields a single-source profile,
17 that is, her profile. It's her unique STR DNA profile.

18 Q So that column 1 is Shannon O'Connor's DNA profile?

19 A Correct.

20 Q And then next to that we see column 2, and it's
21 labeled at the top items 1A and 1B. What is that profile
22 again?

23 A These other columns you see here are the profiles
24 developed from the first report, the record dated March 31,
25 and using these profiles in reference or referring to these

Andrea Lester - Direct

1940

1 profiles when I'm using her control as a comparison. So
2 again, the second column listed as items 1A through B,
3 swabbings of the outside of the condom, is a single-source
4 female profile.

5 Q So, the second column on this report that we're
6 looking at right now, the page, that's the profile of the
7 donor of the DNA that you found on the outside of that
8 column?

9 A Correct.

10 Q And to the left of that is the -- Shannon
11 O'Connor's actual DNA profile?

12 A Correct.

13 Q And what conclusions did you arrive at after you
14 compared Shannon O'Connor's DNA profile and the profile of
15 the unknown female donor from the outside of the condom?

16 A That the profile developed from the condom, the
17 outside swabbings, matches Shannon O'Connor's profile.

18 Q Okay. And what is your conclusion as to whose DNA
19 it was that was on the outside of that condom?

20 A It matches Shannon O'Connor.

21 Q And when we look at these two columns, for example,
22 line 1, as you refer to them as pages of a book, we see 18 on
23 the left, 18 on the right; as we go down, we see the exact
24 same numbers at those pages of that book that you've
25 described for us, is that right?

Andrea Lester - Direct

1941

1 A Correct.

2 Q There's one additional thing I want to ask you
3 about. I'll wait until I get to the next page.

4 Now, once you determined that Shannon O'Connor's
5 DNA matches the outside of the condom DNA, did you then look
6 at Shannon O'Connor's DNA profile and look at it and how that
7 compares to any of the donors of the mixture on the inside of
8 the condom?

9 A I used her control in comparison with those
10 mixtures to see if she was a contributor to those mixture
11 profiles on the inside of the condom, and I concluded that
12 the mixture profile is consistent with her DNA admixed with
13 at least one additional donor, at least one of which is male.

14 Q When you say that Shannon O'Connor's DNA profile is
15 consistent with the female donor of the inside condom
16 mixture, what does that mean when you say it's consistent
17 with?

18 A It means that at all these pages of this book of
19 DNA and the mixture profile, she shares an allele or a number
20 within that mixture profile.

21 Q Now, I'm now going to turn to the third page of
22 your report from Exhibit 123. Can you see that?

23 A Yes.

24 Q And in reading from it, the second paragraph, you
25 indicate, "Profile from the swabbings of the outside of the

Andrea Lester - Direct

1942

1 condom matches the STR DNA profile from Shannon O'Connor."
2 Essentially you say in the record it's a match --

3 A Correct.

4 Q -- her DNA to the outside of the condom?

5 A Correct.

6 Q You indicate the probability of selecting an
7 unrelated individual with an STR DNA profile that matches
8 these items is less than 1 in 300 billion?

9 A Correct. When we have a match in a case, we add a
10 statistical probability to that, meaning that if -- if I look
11 at 300 billion people, I would expect to find that profile
12 once. And in this case, I'd just seen that profile once.

13 Q And in the scientific community, what significance
14 can you testify and indicate as to this statistical number, 1
15 in 300 billion, as it relates to whether there's a positive
16 and absolute match?

17 A That she was a contributor of the profiling on the
18 outside of the condom.

19 Q Then you go on in the third paragraph to talk about
20 the mixture profiles from the swabbings of the inside of the
21 condom - sperm and nonsperm fractions - are consistent with
22 DNA from Shannon O'Connor. Again, that's where you are
23 stating what as to the material found on the inside of the
24 condom?

25 A That she's a contributor to that mixture profile.

Andrea Lester - Direct

1943

1 That she's one of the individuals involved with that profile.

2 Q Okay. Now, you also in this report -- and I think
3 you indicate earlier -- state that the inside -- the material
4 on the inside of the condom has a contributor, one of which
5 is a male, is that correct?

6 A Correct.

7 Q Now, based upon your testing and examination, once
8 you finished examining the condom as you described and once
9 you had the known DNA of Shannon O'Connor and you concluded
10 your testing and examination, what can you say as far as the
11 male contributor portion of the material on the inside of the
12 condom as far as how many alleles are there that would or
13 would not allow you to do any kind of a matching? How would
14 you state that?

15 A I don't think I quite understand the question.

16 Q Okay. It was a little too long. I'm sorry. I
17 guess my question is: What, if anything, can you say about
18 the male contributor DNA profile on the inside of the condom
19 as far as what could you or could you not do if you had a
20 donor who actually left that DNA?

21 A When looking at the mixture profile in comparison
22 to Shannon's known profile, I eliminate any alleles that she
23 may have contributed to that mixture profile and I look at
24 the alleles that are left over, assuming that those alleles
25 or that remaining profile came from a male. Now I can't do

Andrea Lester - Direct

1944

1 anything with that male profile because I have nothing to
2 compare it to.

3 Q Okay. If you had -- based on what you found by
4 examining the inside of the condom, the DNA, if you had had
5 any samples to compare it to, are you able to state whether
6 or not you could make any determination as to a positive
7 match as to that DNA?

8 A Because it's a mixture profile, I can't say match,
9 but if I had a male's profile or known profile from an
10 individual, the only two possible conclusions I could come up
11 with would say either the male is a contributor or is
12 excluded as a contributor to that profile. That's all I
13 could conclude.

14 Q Okay. You couldn't state that it's a positive
15 match as to that individual?

16 A No. Because it's a mixture profile, no, I cannot.

17 Q Okay. Miss Lester, you talked a little bit about
18 the inside of the mouth, just a little bit earlier.

19 A Correct. When collecting a buccal swab, yes.

20 Q My questions with respect to the inside of the
21 mouth, how would you describe the inside of the mouth as far
22 as being a place where cells are located as to how easily or
23 not easily DNA can be removed or scraped off from the inside
24 of the mouth?

25 A Your mouth is a very good source of DNA because

Andrea Lester - Direct

1945

1 it's very moist, and every time you swallow, you're
2 technically recycling what's in your mouth, so you always
3 have the saliva in your mouth, you know, moving the cells
4 around.

5 Q Okay. If an individual was performing oral sex on
6 a male penis --

7 A Yep.

8 Q -- would there be, in your observation, a
9 possibility that they're scraping off DNA cells from the
10 inside of the mouth of the person in whose mouth the penis is
11 in?

12 A It's possible, yes.

13 Q Now you indicated that when you examined the condom
14 that was sent to you -- were you able to tell by examining
15 the condom whether that condom had been removed by rolling it
16 backwards or whether it was still rolled on the way it would
17 be rolled on to an erect penis?

18 A It was unraveled, what you would expect to find an
19 unused condom in its wrapper as far as what side was inside
20 or outside. I don't know if that's what you mean.

21 Q But it was unwrapped?

22 A Yes.

23 Q And the mixture of DNA that you described that you
24 found on the inside of that condom, is that mixture -- the
25 way you found it, would that be consistent or not with a

Andrea Lester - Direct

1946

1 situation where a person, female, had performed oral sex on a
2 male and then afterwards the male put the condom on and
3 engaged in sexual intercourse with a female?

4 MR. FISCHER: Your Honor, I think that is
5 going beyond this witness' particular expertise, I really do,
6 and it's leading and speculative.

7 THE COURT: I think it certainly is a
8 hypothetical question, and certainly this witness has
9 expressed sufficient qualifications to testify about how
10 DNA -- what it is and how it's used. I think it probably is
11 within the realm of her ability, so I'm going to overrule
12 your objection.

13 A All I can say, it is a possibility.

14 Q Okay. Final question, Miss Lester: The inside of
15 a woman's or a girl's vagina, is that a place where you would
16 expect DNA to be very readily scraped off during the course
17 of a sexual intercourse act?

18 A Yes.

19 MR. LOVRIC: Those are all the questions I
20 have, Judge.

21 THE COURT: Okay. Mr. Fischer.

22 MR. FISCHER: Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MR. FISCHER:

25 Q Miss Lester, my name is Kelly Fischer. You spoke

1 about a possibility that, as I understand, DNA could be
2 transferred from the inside of somebody's mouth to a penis
3 and then from a penis to the inside of a condom, correct?

4 A Yes. It's a possibility.

5 Q Since we're in the realm of possibilities, would
6 you say that it's possible for female DNA to be transferred
7 say from any other object that was used inside of a female
8 vagina and then that object placed inside the condom?

9 A Sure.

10 Q Okay. I want to make sure that I understand this.
11 Your testimony is that the male DNA that was found inside
12 this condom was DNA -- a mixture of DNA, am I correct?

13 A There's a mixture profile in that condom, meaning
14 there's more than one individual in the inside of the condom.

15 Q One of the individuals whose DNA you found inside
16 the condom was Shannon O'Connor, a female?

17 A I couldn't -- exactly. Yes.

18 Q And you also found DNA inside the condom that was
19 from -- that was male DNA?

20 A Correct.

21 Q But you can't say whether it was from one male, two
22 males, or any number of males, am I correct?

23 A I know there's at least two individuals involved
24 with that mixture. I don't know how many males. If I'm
25 using her control and eliminating the alleles that she has

1 present, with the alleles that are in the mixture, I only see
2 one other individual or possibility of just one other
3 individual. We concluded there's at least one additional
4 donor.

5 Q Well, there's a difference between one additional
6 one and at least one additional donor, isn't there?

7 A Correct. Without controls, I can't conclude
8 anything else.

9 Q So you can't say here with any reasonable degree of
10 certainty whether it was one additional donor or more than
11 one additional donor, am I correct?

12 A As far as the male contributor?

13 Q Yes.

14 A No. Not without controls.

15 Q Does your testing allow you to determine how long
16 ago the DNA that you found on this condom was put there?

17 A No.

18 Q You talked at one point about yeast, that yeast
19 found on the inside of the condom. Do you remember speaking
20 about that?

21 A Yes.

22 Q Can you tell me more about what that means.

23 A Not really sure. Just observing the skin cells or
24 whatnot on the inside of the condom, I saw a lot of yeast
25 cells. As far as where they came from, I don't know.

Andrea Lester - Cross

1949

1 Q What does the presence of yeast cells in that
2 setting signify to you?

3 A Not really anything. Just that there's yeast
4 present. I guess if I could assume perhaps that item had
5 been left there for a while for possible breakdown of the DNA
6 present. All I saw really were yeast cells. I saw very few
7 epithelial cells or skin cells and I did not observe any
8 sperm cells.

9 Q And the presence of yeast then was an indicator
10 that some time had passed before you tested that condom?

11 A Assuming, yes.

12 Q You have been working with New York State Police
13 for approximately eight years, is that your testimony?

14 A Correct.

15 Q Are you affiliated with Troop C at all?

16 A As far as?

17 Q The New York State Police Troop C?

18 A I know where they are. I don't work with them.

19 Q You don't work with them?

20 A If they -- if a case goes to them, they submit it
21 to my laboratory, but as far as working with that particular
22 troop on a personal basis daily, I don't.

23 Q So you don't work with them daily on a personal
24 basis?

25 A No.

Andrea Lester - Cross

1950

1 Q But you do work with them from time to time?

2 A They're just like any other agency that drops off
3 evidence to our lab.

4 Q So you do work with Troop C from time to time?

5 A Sure. Just as any other troop in the state.

6 Q Now when you began with Troop C -- I'm sorry. When
7 you began with the New York State Police approximately eight
8 years ago, was that before or after the matter involving
9 Officer Lishansky?

10 MR. LOVRIC: Objection.

11 THE COURT: Sustained.

12 A I don't -- I'm sorry.

13 Q Chain of custody is important?

14 A Correct.

15 Q Where did this item, this condom, to your
16 knowledge, come from?

17 A I don't really know much about the case other than
18 what happens to it when it comes into the laboratory.

19 Q You have any idea where this came from?

20 A No.

21 Q At any time other than the time it showed up on
22 your desk, you have no idea who's had access to this condom?

23 A No.

24 Q Who delivered it to you?

25 A It was delivered by the troop to evidence

Andrea Lester - Cross

1951

1 receiving. When the case was assigned to me, I went to
2 evidence receiving, they retrieved the item from the vault
3 that I explained earlier and scanned it into my custody.

4 Q You said it was delivered to you by the troop.
5 What do you mean?

6 A Sir, I'm not quite sure what you're asking. I
7 wasn't present when the item was brought to the lab. As far
8 as what took place then, I don't know. I just know what
9 happens to the item when it's scanned into my custody.

10 Q You used the word troop, and I was inquiring what
11 you meant by that.

12 A Oh. That it was the agency that dropped off. You
13 had referred to troop, so it was the State Police case, I
14 believe, and I believe that's the agency that dropped off the
15 items of evidence to our evidence receiving section.

16 Q The male DNA that you found inside the condom, did
17 you check that DNA against any samples that were obtained
18 from the state of New Jersey?

19 A No.

20 Q Did you check that DNA against any samples that
21 were taken from the state of Connecticut?

22 A No.

23 Q You were not asked to do that?

24 A No.

25 Q You did not compare that male DNA against samples

Andrea Lester - Cross

1952

1 taken from any other males in the Norwich area, am I correct?

2 A No, I did not have any other male controls in the
3 case.

4 Q This was a rush job?

5 A Define rush job.

6 Q I'll refer to -- in the documents that are in
7 evidence that you reviewed, is there any mention that this is
8 a rush?

9 A Yes. Meaning that I had to put all my other cases
10 assigned to me aside and only focus on this particular case
11 at that time. Which if it means working 12 hours that day to
12 get it done, I do.

13 Q You spoke about statistical probabilities?

14 A Correct.

15 Q Did you do a match of the male DNA that you found
16 against any of, say, five predominant genetic backgrounds
17 that you might find in North America?

18 A No. There's no statistic applied to anything in
19 the mixture profile, only with the female profile on the
20 outside of the condom because I had a control to refer with.

21 Q Were you able to determine whether the male DNA
22 found inside the condom, that there was a probability of any
23 sort if you compared it against say the African-American
24 population in North America?

25 A No, sir. Unless I had a control to use as a

1 comparison, there is no stat applied to a mixture at all.

2 Q So if you had a good sample of the DNA that you
3 found inside that condom, with plenty of DNA material that
4 had not been degraded, would you be able to say that the
5 probability is 1 in 7 million that this person is of -- has
6 some African-American descent in them?

7 A No. First off, we don't do that. We don't do any
8 race typing. Also, that would not be applicable in this
9 sense because the only thing I could possibly conclude,
10 having a male profile, known male profile, is to either
11 include the individual in that mixture profile or exclude him
12 as a contributor. Meaning he's possibly in there or he's not
13 at all in there. I cannot apply stat to that because it's a
14 mixture profile.

15 Q So is it your testimony that -- that say an
16 Asian-American DNA sample would be very similar in regard to
17 the DNA that you tested for to say an African-American DNA
18 sample?

19 A Sir, I guess I'm not quite sure where you're going
20 with this. We don't do any race typing. Our stats don't
21 specifically say an individual is of this racial descent.

22 Q Does anybody do that type of comparison?

23 A I'm sure. We don't in our laboratory.

24 Q Do you know whether any steps were taken to sample
25 say anybody from --

Andrea Lester - Cross

1954

1 MR. FISCHER: I'll withdraw the question
2 anyway, your Honor.

3 Q What's involved in actually performing the tests
4 that you perform if you're given a sample? What do you
5 physically have to do to generate the reports that are in
6 evidence?

7 A I guess starting at what point, sir?

8 Q When you receive the sample on your desk.

9 A Okay. In relation to the condom, I use sterile
10 swabs to swab the outside of the condom separate from the
11 inside, as I stated earlier, to remove any possible skin
12 cells or anything that might be left on either side of the
13 condom, just preserving the possible DNA from that item onto
14 the swab. I then test the swab for -- with chemical
15 screening tests, determine what samples, what type of samples
16 are present, what type of bodily fluids are present, and then
17 I take a cutting from that swab and place it into a tube for
18 extraction, which takes all the way through quantification,
19 amplification, and then to DNA analysis.

20 Q Start to finish, how long does that process take?

21 A Each step takes a certain period of time. For me
22 making the actual cutting and doing the testing,
23 approximately --

24 Q In this case how long did it take?

25 A I'd have to look at the notes, but I know it only

Andrea Lester - Cross

1955

1 took a few days, maybe a week, I believe, from the beginning
2 to when the report was issued.

3 Q So is it fair to say that it would only take you
4 about a week to test another sample if you were given another
5 sample?

6 A Absolutely. Given the chance to eliminate all my
7 other cases from my desk, to only focus on that, yes.

8 Q In order to do a comparison, you wouldn't require a
9 physical specimen to compare against the information that you
10 had concerning the male DNA found inside this condom, am I
11 correct?

12 A I'm not quite sure what you mean.

13 Q Well, you could take the information that you
14 gleaned from the male DNA that you found inside this condom
15 and you wouldn't need a physical specimen to compare the two,
16 would you?

17 A I would need a buccal control specimen, yes.

18 Q What if somebody else tested a buccal control from
19 somebody, another lab, and they produced this information
20 using the same tests that you used and gave you that
21 information, could you compare them on paper and make a
22 determination of whether they match up?

23 A It's possible, but I believe we'd still want it
24 ourselves; that way we know exactly what's happened with that
25 item, that control item coming from that exact individual.

Andrea Lester - Cross

1956

1 Q I understand you would like that. My question is:
2 Could you -- could you do that paper comparison?

3 A I believe so, yes.

4 Q Using this --

5 MR. FISCHER: Can I use the exhibit, please?

6 Q I'll show you what's in evidence as Exhibit 123.
7 Do you see that?

8 A Yes.

9 Q You used the polymerase chain reaction using
10 AmpflSTR Profiler Plus and AmpflSTR COfiler, those are the
11 tests that you used?

12 A Those are the kits utilized, yes.

13 Q Those kits, are they utilized by other police
14 agencies, to your knowledge?

15 A Laboratories in the nation, yes.

16 Q Is it a fairly commonly used kit?

17 A Yes.

18 Q If another laboratory used that kit to test DNA and
19 they checked against these particular locus, loci in this
20 left-hand column, and they produced results showing the
21 allele numbers that are shown in these columns --

22 A The profile from an individual, is that what you're
23 referring to?

24 Q Yes. If another lab produced something structural
25 like this with those same loci using those same kits, you

Andrea Lester - Cross

1957

1 could take them side by side and compare them, couldn't you?

2 A I believe so. I'm not quite sure what our
3 procedure is when it comes to that because it would be from
4 another state, I'm assuming you're saying.

5 Q You'd have to rely on that other state's laboratory
6 to produce a trustworthy result?

7 A Which is -- I believe we would have to have a
8 control taken from that individual and were able to see the
9 chain of custody, where it is collected, who collected it and
10 whatnot. That's why I'm not -- again, I'm not quite sure our
11 procedures. I don't believe we can rely on another state's
12 profile just because we're not quite sure where it is coming
13 from.

14 Q You would not rely on them because you wouldn't
15 feel comfortable that they did what they were supposed to do
16 in producing that result, is that your testimony?

17 A If it's an accredited laboratory, I would assume
18 yes. I'm not quite sure, familiar with procedures pertaining
19 to out-of-state laboratories, comparing profiles from that,
20 out-of-state laboratories to profiles I developed from an
21 item.

22 Q Your laboratories for New York State Police in
23 Albany is an accredited laboratory?

24 A Correct.

25 Q So if you got results from another state's

Andrea Lester - Cross

1958

1 laboratory that was coming from an accredited laboratory
2 using the same kits against the same loci, would you rely on
3 that?

4 A I'm saying it's a possibility. I don't know if our
5 procedures and our rules in our laboratory allow for that to
6 take place. Sure, it's possible, because it's on paper, but
7 I don't know if we are allowed to do that.

8 Q So the New York State Police rules might say, we're
9 not going to permit you to do that, am I correct?

10 A I'm assuming. I'm not sure. I've never had to do
11 that before and I don't know of any other cases where we've
12 had to do that. That would be something that would be asked
13 of the supervisor of the procedures because, quite
14 truthfully, I don't know.

15 Q Have you ever had occasion to go to other state's
16 laboratories to find DNA to match against a known sample?

17 A Not recently. I work in my lab alone.

18 Q Do you know whether the State Police have ever had
19 occasion to do that in the past?

20 A State Police troopers or lab personnel?

21 Q State Police lab personnel.

22 A Not that I know of.

23 MR. FISCHER: Okay. Thank you. Those are all
24 the questions I have.

25 THE COURT: Miss Peebles?

Andrea Lester - Redirect

1959

1 MISS PEEBLES: I have no questions, your
2 Honor.

3 THE COURT: Mr. Lovric.

4 REDIRECT EXAMINATION

5 BY MR. LOVRIC:

6 Q You were asked by Mr. Fischer about the yeast on
7 the condom?

8 A Yes.

9 Q Is that consistent, finding yeast on a condom like
10 that, let's say, if that condom was in a storage unit when it
11 was fairly hot during the summer and that condom stayed in
12 there for some period of time in a storage unit? Would that
13 possibly yield to yeast growing on the condom?

14 A I'm really not sure. I do know I've never
15 encountered yeast on the inside or outside of a condom.
16 That's why I noted it in my notes, because it just seemed
17 interesting. I've never seen that before.

18 Q Okay. You indicated -- Mr. Fischer asked you about
19 that -- that some indication that the item, the condom had
20 been left around for a while?

21 A It's a possibility. If there's going to be yeast
22 present, I would assume it would be over a period of time to
23 have that many yeast cells.

24 Q Okay.

25 MR. LOVRIC: That's all I have, Judge.

Andrea Lester - Recross

1960

1 MR. FISCHER: May I follow up on that, your
2 Honor?

3 THE COURT: Sure.

4 RECROSS-EXAMINATION

5 BY MR. FISCHER:

6 Q This is the first time that you have ever
7 encountered the situation that you found with respect to this
8 condom concerning yeast in particular?

9 A I've never seen yeast on a condom before.

10 Q Have you seen yeast when testing human bodily
11 fluids DNA?

12 A On older items of evidence, yes.

13 Q What types of items of evidence are you speaking
14 about?

15 A Well, I usually work homicides, so a lot of times
16 if we have clothing that's pulled off of a body that's been
17 in the ground for a while, things like that.

18 Q Things that are like moldy?

19 A Sometimes, yes.

20 Q Have you tested condoms before to find DNA?

21 A Oh, absolutely.

22 Q How many times?

23 A How many condoms I have worked on?

24 Q Yes.

25 A Twenty or 30.

1 Q Have you ever done any reading, anecdotal reading
2 about other tests of condoms to learn how to do it?

3 A How to perform tests on a condom?

4 Q Yeah.

5 A No.

6 Q What training did you receive, if any, with respect
7 to how to test a condom for DNA?

8 A I went through serology training that just trained
9 us on how to examine items, how to remove some of the
10 materials or bodily fluids from any number of items, whether
11 it's clothing, condom, underwear, anything. So it's just a
12 general training that we do for general items that we work
13 on. We don't have specific training as to how to examine a
14 condom. I just use it as any other item I examine.

15 Q And since September of 2001 you've been a forensic
16 scientist with the biological science section, New York State
17 Police, Albany, New York, correct?

18 A Correct.

19 Q And July 2000 to September 2001 you were
20 assigned -- I'm sorry -- a senior laboratory technician,
21 biological science section, same place?

22 A Correct.

23 Q And you've had eight months of on-the-job training
24 under supervision of a section supervisor in DNA analysis and
25 interpretation?

Andrea Lester - Recross

1962

1 A Correct.

2 Q And the training in forensic serology that you
3 mentioned was October of 2001 to April 2002?

4 A I believe so.

5 Q And that was forensic serology training inclusive
6 of collection, examination and preservation of biological
7 evidence?

8 A Correct.

9 Q And in January 2002 you had semen identification
10 training conducted by a supervisor of DNA services, Forensic
11 Investigation Center, Albany, New York?

12 A Correct.

13 Q And back in 2000, 2001, ten months of on-the-job
14 training in DNA extraction, quantification and amplification
15 under the supervision of a supervisor of DNA services,
16 correct?

17 A Correct.

18 Q In all of those years of training and experience,
19 this is the only time you ever found the situation you found
20 with respect to this condom, that is, the presence of yeast,
21 am I correct?

22 A Yes. That's why I noted it. I just found it to be
23 odd.

24 MR. FISCHER: Thank you.

25 THE COURT: Miss Peebles?

Andrea Lester - Recross

1963

1 MISS PEEBLES: No questions.

2 THE COURT: Mr. Lovric?

3 MR. LOVRIC: I have no other questions.

4 THE COURT: Thank you, Miss Lester. You may
5 step down.

6 (Witness excused)

7 MR. LOVRIC: Government rests, your Honor.

8 THE COURT: Okay. That's a surprise. I guess
9 based on our conversation yesterday, the defense is not
10 prepared to go forward with any witnesses, is that right?

11 MR. FISCHER: No, your Honor, based on that
12 conversation, we're not.

13 THE COURT: Because we were led -- we thought
14 that the government's proof would take the rest of the day.
15 So would you prefer to wait until tomorrow morning to do --

16 MR. FISCHER: Yes, your Honor, please. I just
17 don't have my witnesses ready to go yet.

18 THE COURT: Let's go to side-bar for just a
19 minute before I cut the jury loose.

20 (Meeting at the bench off the record)

21 (In open court)

22 THE COURT: All right, ladies and gentlemen.
23 What we were doing at side-bar basically was trying to get a
24 feel for what the future holds in terms of the length of the
25 proof and where we'll be. And tomorrow the defense indicates

1 that there's witnesses that will take up the time period that
2 you assigned to us from 9:30 to 1, and then the next question
3 was, how much do you have maybe the following Tuesday when we
4 come back together. And there may be some, there may be a
5 little bit, but it looks overall that we may finish with the
6 entire proof -- of course, I haven't heard about rebuttal
7 from the government yet, but we may finish with the proof on
8 Tuesday and if not, certainly by Wednesday. So at least
9 there's an end in sight, which I know you're all waiting to
10 hear.

11 The procedure is, after the proof is all in
12 and before you, then at that time the Court will -- there'll
13 be closing arguments to be made from everyone, and then I'll
14 charge you on the law and give you the case. So if you can
15 figure out how long that's going to take, try it, but I
16 really can't tell you. My best guess is that you'd have this
17 case to decide it by sometime Thursday. So hopefully we can
18 accomplish that and we can have a result.

19 So, now, we're going to recess until tomorrow
20 morning, 9:30, when we're going to go to 1 in the afternoon
21 per your instructions.

22 So let me remind you not to discuss the case
23 among yourselves, with anybody else, or permit anyone to
24 discuss it with you. Don't view or listen to any media and
25 no research on your own unless you want to go home and read a

1 book about what we heard today. I don't think you want to do
2 that.

3 Have a nice evening. Hope it will be warmer
4 tomorrow.

5 (Jury excused)

6 THE COURT: All right. The government has
7 rested so the defendants are free to make any motion they
8 feel is appropriate at this time.

9 MR. FISCHER: Thank you, your Honor. On
10 behalf of Mr. Sacco I'd like to make the application to
11 dismiss with respect to count one, selling and buying of
12 children. I understand actually that is the count against
13 Miss O'Connor, if I recall correctly, and the second count is
14 against Mr. Sacco, so I'll address only the second count
15 number two. There are some conclusions that have been
16 reached apparently by DSS workers about that point but there
17 is no direct proof of it. In fact, all the financial
18 evidence, as I see, that came in today shows Linda O'Connor
19 paid her rent. It also shows Mr. Sacco was deeply in debt.
20 There's nothing other than the speculation as recited by Liz
21 Chesebro that she had suspected all along something was going
22 on but that Shannon O'Connor denied that it was going on at
23 the time in the note that we read with Miss Chesebro.
24 There's nothing other than that to support that claim against
25 Mr. Sacco and I move to dismiss it on that basis.

1 In addition, the interstate commerce element
2 is lacking in that, yes, Mr. Sacco did travel at times from
3 New Jersey to New York but he had a number of different
4 purposes. There's been no proof with respect to the dominant
5 purpose test, which I also suggest based on the Second
6 Circuit decision in US versus Sarios, I do not have the cite
7 at hand. We discussed earlier that it must be established
8 beyond a reasonable doubt that one of the dominant purposes
9 was for the illegal purpose and that the illegal purpose was
10 not just an incident to other legitimate purposes. I move on
11 that basis as well. There's absence of proof supporting the
12 claim.

13 With respect to the sex trafficking charge
14 against Mr. Sacco, I submit your Honor that the interstate
15 commerce aspect of that is also lacking for the same grounds
16 I just stated with respect to the second count and, again,
17 the sex trafficking of children by force, fraud or coercion.
18 The proof, the only proof of coercion as I see it is the
19 statement by -- Shannon O'Connor made at a time when she was
20 in a psychiatric hospital, taking psychotropic medications on
21 a regular basis, and I submit is incredible as a matter of
22 law. It cannot support beyond a reasonable doubt the charges
23 against Mr. Sacco in this case.

24 With respect to the 2251 charge, sexual
25 exploitation of children, there is no visual depiction.

1 There's no proof that there has been a visual depiction other
2 than, again, testimony from this young girl, 14 years old at
3 a time when I think it's at the point where the Court can
4 rule as a matter of law that her credibility is not
5 sufficient under any reasonable interpretation of it to
6 support the charges against Mr. Sacco.

7 THE COURT: I kind of thought that was the
8 jury's job to decide, wasn't it?

9 MR. FISCHER: There comes a point, your Honor,
10 I submit that it's the Judge's job if it's so incredible that
11 the Court may, as a matter of law, make that determination
12 and I think in cases that I've seen, few of them through the
13 years, the proof has been substantially stronger than this in
14 cases that are permitted to go to the jury and the only proof
15 being from this girl that the proof concerning any pictures,
16 photographs, etcetera coming out when it did under the
17 circumstances in which it did after she had been lead around
18 for six or nine months by government people who had their own
19 motivation to have her tell her story is something that this
20 Court does have discretion to say it's insufficient as a
21 matter of law to let it get to the jury.

22 THE COURT: Okay.

23 MR. FISCHER: And, again, the Mann Act
24 violation with respect to Mr. Sacco, the last count -- the
25 count against Mr. Sacco based on 2423 as I understand it is

1 again lacking in its interstate commerce aspect. There's no
2 proof about dominant purpose whatsoever and there's no proof
3 that this is anything except incidental. If that is so, that
4 does not, as a matter of law, meet the burden that the
5 government faces beyond a reasonable doubt.

6 With respect to the receiving or possessing
7 child pornography, the only evidence in this case, unlike
8 most cases that I've read about, is the Exhibit 40,
9 Government's Exhibit, that was mailed to Mr. Sacco that
10 contains an image of a young woman or a girl standing there
11 that comes from the 2002 internet apparently. That, as a
12 matter of law, does not suffice to be proved sexually
13 explicit material. There's no focus on sexual areas. She's
14 not engaging, in any way, in any sexual activity. I also
15 suggest, your Honor, that that was not possessed at the time
16 of the creation of the criminal complaint in this case. It
17 was not possessed at the time the matter was presented -- was
18 not known by the government, I apologize, at the time the
19 matter was presented to the grand jury. It was not known
20 about, as I understand it, by the government at the time the
21 issuance of the indictment. I did not ask for a bill of
22 particulars, I probably wouldn't have gotten one anyway, but
23 I submit also based upon the government's opening in this
24 case that their proof and their intent and the confines of
25 this case relate to photographs of Miss Shannon O'Connor, not

1 objects taken subsequent to the indictment, to boot strap and
2 I do submit those are outside the realm of this prosecution
3 and should not be properly considered as part of this case
4 against Mr. Sacco. But even if they're, the photographs that
5 are shown in there, the one photograph I've addressed. The
6 other photographs that are in a brochure mailed through the
7 US mails, apparently from Louisiana, was an envelope bearing
8 date stamp 2006, shows no explicit sexual contact as I see it
9 as it's defined in the statute. There is nothing specific
10 showing genital, genital to oral or any other type of
11 prohibited behavior and that cannot be deemed the basis for
12 this charge against Mr. Sacco.

13 With respect to Shannon O'Connor saying that
14 she was photographed in sexual positions, if it's deemed
15 true, then that might be deemed sexually explicit conduct but
16 again we have lacking interstate commerce aspect of it. No
17 evidence, as I understand it, about where these cameras were
18 manufactured, where they were purchased other than the E-Bay
19 records which don't show, as I understand it, where they were
20 transported from or to. The interstate commerce aspect is
21 absolutely lacking on these charges. In addition, I
22 reiterate the dominant purpose test. There's no evidence on
23 this whatsoever to indicate anything other than this is
24 purely and in the strangest sense a coincidence and on that
25 basis I do not believe that there's enough proof here to

1 support the charges against Mr. Sacco at this point.

2 THE COURT: Okay. Mr. Lovric, you want to be
3 heard or you want to wait until we hear from Miss Peebles.

4 MR. LOVRIC: I can do it either way, Judge.

5 THE COURT: Let's have Miss Peebles tell us
6 why the counts against her client should be dismissed and
7 then you can reply as to both.

8 MISS PEEBLES: Your Honor, it's pure
9 significance we would echo some of the same arguments that
10 Mr. Fischer has made on behalf of Mr. Sacco. But based on
11 what we heard throughout the course of the government's case,
12 there has been a complete lack of evidence to sustain a
13 conviction on any of the five counts that charge Miss
14 O'Connor. She's charged in count one with selling her
15 daughter to Dean Sacco for purposes of producing child
16 pornography and the government's theory is that Mrs. O'Connor
17 allowed Mr. Sacco to do this in lieu of paying rent. We have
18 submitted proof that, in fact, Mrs. O'Connor paid her rent
19 through -- up through January when HUD began taking over her
20 rent payments. Specifically, your Honor, we submitted proof
21 of a wire transfer from Mrs. O'Connor back in July of '06 in
22 the amount of \$1,800 with an extra hundred dollars or so for
23 the cost of the wire transfer. On top of that we have a
24 withdrawal on the first of November of '06, a cash amount of
25 \$600, and after that, your Honor, Mr. Sacco is calling and

1 threatening the Department of Social Services to evict Mrs.
2 O'Connor and her daughter.

3 Now, your Honor, HUD takes over in January and
4 we have proof there was an application through Delaware
5 Opportunities that Mrs. O'Connor began applying for
6 assistance. The fact that Mr. Sacco called and was basically
7 letting them know he was going to evict them flies in the
8 face of the government's argument to suggest that somehow
9 they're in cahoots in exchanging Shannon for rent money. It
10 makes absolutely no sense that Mrs. O'Connor would even owe
11 any kind of back rent which is indicated on the money order
12 that the government introduced today in January for \$113,
13 that she still owed him \$300 for January and that's when HUD
14 began to take over.

15 So, your Honor, if the government's theory is
16 to be believed through speculation by the witness because
17 apparently she had no firsthand knowledge of it, that the
18 government's theory is to be believed, your Honor, it makes
19 absolutely no sense that Mrs. O'Connor would owe him anything
20 for January if they were in some kind of cahoots about
21 Shannon O'Connor being exchanged for rent money for purposes
22 of producing child pornography. So, your Honor, I don't
23 believe there is sufficient evidence whatsoever to sustain
24 count one of the indictment because the government's theory
25 is that she did not pay her rent and in lieu of that provided

1 her daughter to Mr. Sacco. And I have to also emphasize,
2 your Honor, that Shannon O'Connor said that Mr. Sacco had
3 sexual relations with her in August of '06 when they first
4 moved in and there's absolutely no proof whatsoever that Mrs.
5 O'Connor knew that and she had paid the rent and then Shannon
6 O'Connor is out of her custody while she's with Renee Lang
7 from that period of August 20 through October 11, your Honor.
8 We already have proof that she paid October's rent and we
9 have -- November 1 we have a 600 withdrawal for Mr. Sacco.
10 Mr. Sacco never deposited any cash funds that were provided
11 from Mrs. O'Connor. We heard the testimony today that the
12 1,800-dollar wire transfer had never been deposited into any
13 of Mr. Sacco's accounts. It was cash he took. His pattern
14 of behavior would be the same. It would not be surprise that
15 he would not deposit the 600-dollar cash payment that she
16 made on November 1. Then, again, the only trouble with the
17 rent payment, your Honor, in December he's calling DSS. He
18 calls her looking for money on December 6 because she hadn't
19 paid him yet. So with that, your Honor, I think there's a
20 complete lack of proof. There's no evidence whatsoever to
21 sustain a conviction on count one of the indictment based on
22 the government's theory.

23 And then if we look to count three, which
24 charges sex trafficking, your Honor, notwithstanding the
25 credibility of the witness which I would echo Mr. Fischer's

1 argument with respect to that in terms of her recall which he
2 had zero recall with the defense but she was able to recall
3 specific dates that weren't even the same from time past when
4 she gave previous disclosures. With that, your Honor, it's
5 all based on the government's theory that in 2004 and
6 sometime during that time period that Mrs. O'Connor allowed
7 George Lang to have sex with Shannon. That's the 2004 date.
8 But if the Court looks at her, Shannon O'Connor's, original
9 videotaped interview she specifically says on six occasions
10 it started Christmas time right before her 12th birthday
11 which would be December of 2005, that's what she says over
12 and over again. The only time she mentions 2004 is when she
13 comes into the courtroom to testify, that's after Renee Lang
14 establishes that George Lang, not only was he impotent the
15 year before he had cancer which was 2004, but also by the
16 time in 2005 rolled around he had undergone so many
17 treatments in chemotherapy he was a very sick man. Not less
18 than six months later he died. Cancer goes to the brain, it
19 metastasizes in February. It's literally impossible that
20 Mrs. O'Connor would have been able to take pictures of
21 Shannon O'Connor giving George Lang a blow job while she's
22 taking photographs with what Shannon O'Connor describes is a
23 digital camera, not only in this courtroom but also on the
24 prior videotaped interviews.

25 Now, the testimony was George Lang never owned

1 a digital camera. Linda O'Connor never owned a digital
2 camera and there was no digital camera, no evidence that is
3 was ever hooked up to the USB hard drive on the Lang
4 computer. Not only that, they found over five thousand data
5 image files on that hard drive and they did find adult
6 pornography, there's no child pornography found on that
7 computer and there are absolutely no naked images or sexually
8 explicit images of Shannon O'Connor.

9 With regard to the Best Western because that's
10 also alleged in count three which the government's theory is
11 the Best Western activity, she specifically states that her
12 mom took her there three times after they moved to Norwich.
13 Says that in the December interview. They get the hotel
14 registrations, your Honor, and they establish that Mrs.
15 O'Connor took her there on December 1 which coincidentally is
16 the same day she gets her SSI check for \$611. On top of that
17 it's coincidentally on December 6 Mr. Sacco hadn't received
18 his rent money because they had gone to the Best Western on
19 December 1. So by then, your Honor, Shannon admits they had
20 gone shopping. Government introduces receipts from Wal-Mart
21 that they had gone shopping. There are no hotel
22 registrations after that at all. What Shannon O'Connor says
23 in her videotaped interview is two separate occasions after
24 that her mom uses her own name and two men show up at the
25 hotel after they've already registered and checked in. What

1 she -- I think what the government was eliciting from her is
2 that one time they went after that there was a man upstairs
3 waiting in the hotel room. Well, that was never elicited
4 through the videotaped interview. That's not what she said
5 and the receipts don't bear that out which is exactly why she
6 would now have to say something different which is not
7 supported by the home phone records which are in evidence.
8 Specifically, Mrs. O'Connor makes a phone call to the Best
9 Western on November 30 and the Oneonta bus stop. They take
10 the bus to Johnson City. If you look at the phone records
11 there's never any calls to the Best Western after December 1.
12 Not one telephone call to support that she ever took her to
13 the Best Western after that. The hotel phone records or home
14 phone records establish that there's never two consecutive
15 days where she's not home. Her phone was in use all through
16 January and the dog had not been kenneled and the government
17 points out on January 14 the government -- the dog was given
18 away. If you look at the records, the home phone records up
19 through January 30, they get another dog, a puppy, and
20 throughout that time period there's never two consecutive
21 days where that home phone is not in use. It always been
22 used. With that, your Honor, I don't think there's credible
23 evidence to sustain a conviction on count three. I would ask
24 the Court to dismiss that count.

25 With respect to the production of child

1 pornography. I have yet to see a camera or any materials
2 that had been shipped through interstate commerce that had
3 been identified as being used in the production of any child
4 pornography, notwithstanding an issue concerning her
5 credibility. So with that, your Honor, I would also suggest
6 that there is no proof that anything -- any materials had
7 been used or mailed or shipped, transported in interstate
8 commerce because we haven't seen any photographs. There are
9 no photographs. There's nothing to suggest anything was used
10 to even attempt to produce any child pornography with mails
11 that had mailed, shipped or transported in interstate
12 commerce. Investigator Shultz himself testified that Shannon
13 O'Connor had not identified a Sharp video camcorder. She had
14 never mentioned being videotaped in any of her statements.
15 Ever. And she comes into the courtroom and Mr. Lovric pulls
16 it out because it had been found in the storage shed. She
17 had never claimed that she had been videotapes. In fact, we
18 were talking about photographs in all the prior statements
19 and as far as the actual possession of child pornography,
20 there's absolutely no proof whatsoever that Linda O'Connor
21 ever possessed child pornography. Ever. And anything that
22 was found on the Lang computer, even if the government were
23 going to attribute it to Mrs. O'Connor, it was adult
24 pornography. No image of child pornography found on that
25 computer.

1 So, based on all of those reasons, your Honor,
2 I submit that there is a complete lack of evidence to sustain
3 a conviction against Mrs. O'Connor and I would ask that those
4 counts against her be dismissed.

5 Thank you.

6 THE COURT: Mr. Lovric.

7 MR. LOVRIC: Judge, I respectfully not only
8 disagree with defense counsel but indicate to the Court that
9 the arguments that defendants raise and point out to the
10 Court are very selective in memory of my view of the trial
11 evidence. For most of the facts that were solicited on this
12 argument by defense counsel, there are equal and numerous
13 other facts that indicate just the opposite. First of all,
14 there is substantial evidence against Mr. Sacco to establish
15 that Mr. Sacco is a sexual predator. That he's a rapist.
16 That he is a pedophile and that he has a propensity to engage
17 in that kind of conduct with minors. And based upon federal
18 law that is, in fact, admissible for this jury to consider
19 his propensity to rape children, to attack sexually children
20 and to engage in sexual conduct. The fact of the matter is
21 that in this particular case the victim's testimony alone is
22 sufficient if the jury is convinced beyond a reasonable doubt
23 to convict both of these defendants of all the charges. But
24 this case doesn't rest on simply the victim's testimony and
25 the victim's articulation of the things that were done by

1 these two defendants. The victim's testimony alone does, in
2 fact, establish each one of these counts.

3 Count one as it relates to Mr., excuse me,
4 Linda O'Connor, selling of a child. Well, selling of a child
5 in federal law doesn't mean selling. It can also and does
6 equally mean transferring. Linda O'Connor allowing Mr. Sacco
7 to take temporary custody of her daughter for the purpose of
8 engaging in sex acts and in order to produce child
9 pornography is sufficient to convict her. It does not
10 require the sale as we may think of in the natural sense.
11 But the fact of the matter is there is sufficient evidence
12 here for the jury to conclude that she did, in fact, transfer
13 temporary custody of Shannon to this defendant in order for
14 him to rape the victim and to photograph her. How is that?
15 Well, the victim herself testified that on the second or I
16 believe it's the second or third occasion when Mr. Sacco
17 raped her, she came downstairs and told her mother he is
18 doing things to me. And this defendant O'Connor said to the
19 minor, in response to that, well, it's better than being
20 homeless. That fact alone can cause this jury to conclude
21 that defendant O'Connor at that moment knew that defendant
22 Sacco's raping her daughter, had no problem with the fact
23 that he's raping her daughter and she in her mind believed
24 that it was for the overall good of not being evicted or not
25 having trouble making rent payments. That fact alone, but

1 there is more than that. There is a clear picture that this
2 defendant O'Connor was consistently financially incapable and
3 was constantly in the hole of all that eight or ten thousand
4 dollars that went into her bank account. In one month it all
5 got siphoned out within a matter of weeks. The government's
6 never claimed, we don't claim she didn't pay any rent. If
7 the defense thinks that's our argument, well, they missed the
8 boat. That's not at all the point. The point is defendant
9 O'Connor was incidentally in the hole monetarily. That piece
10 of evidence is crystal clear from all the evidence, defense
11 and government. The other portion of that is crystal clear
12 that when she was in the hole on money, she was in dire
13 straits. She couldn't pay rent. She couldn't pay rent at
14 River Street. She couldn't pay rent to Mr. Sacco. Mr. Sacco
15 called DSS. Other people were aware that she was behind on
16 rent. In fact, her own statement in the money order that she
17 does send still indicates she still owes him three hundred
18 bucks. That fact alone can lead this jury to conclude that
19 defendant O'Connor did, in fact, allow Sacco access to her
20 daughter in exchange, quid pro quo, for either sliding on the
21 rent, not paying it on time, not paying all of it, getting
22 away with not paying some of it.

23 The other factors with respect to count one,
24 transferring custody of the child, is the victim herself said
25 this defendant O'Connor did, in fact, participate in the

1 photographing of a rape. Now, the defendants are arguing,
2 well, that's incredible. Well, with all due respect to them,
3 that's for this jury to decide and I submit to your Honor
4 that there is more than sufficient reason for this jury to
5 believe this victim because there are numerous instances
6 which I will outline for the jury in my summation of how it
7 is she's corroborated and corroborative evidence.

8 The first count as to Linda O'Connor is amply
9 presented for the jury's consideration and for them to
10 decide. I've heard mention about the interstate commerce
11 aspect. Interstate commerce, I believe defense counsel do
12 not understand how minimal that has to be. Interstate
13 commerce aspect in all federal statutes and Second Circuit,
14 US Supreme Court has consistently said it has to have some
15 minimal effect. Let me count the ways. Renting the room at
16 a hotel effects interstate commerce. Traveling from New
17 Jersey. Paying bills in New York State from a New Jersey
18 bank account. Traveling to New York State with a car with
19 New Jersey license plates. Taking a camera that you buy from
20 E-Bay that's shipped to New Jersey. Transporting it
21 interstate to New York effects interstate commerce. Both of
22 those cameras have on them, one was manufactured in Japan,
23 the other one is Thailand or Malaysia or some other East
24 Asian country. Those are about seven different ways
25 interstate has been effected in this case. There are

1 numerous other ways. Wire transfer by Miss O'Connor to New
2 Jersey effects interstate commerce. The wiring of money.
3 Mailing of a postal money order to New Jersey effects
4 interstate commerce. The fact that defendants don't think
5 it's adequate doesn't carry the day because the law says the
6 effect has to be minimal.

7 Count two as to Mr. Sacco, Mr. Sacco I believe
8 argues that the purpose for traveling must be solely --
9 that's simply an incorrect statement of law. Mr. Sacco can
10 have multiple purposes in why he traveled to New York so long
11 as one of the purposes was to engage in sexual acts with the
12 minor for the purpose of producing or taking pictures of
13 those acts. That is sufficient. But I submit to this Court
14 that, in fact, Mr. Sacco traveled predominantly to have sex
15 with Shannon O'Connor and the way this Court knows that and
16 the jury knows that is because when you looked at all the
17 evidence that's in front of this jury and all the documents,
18 Mr. Sacco's travels ignited from August of 2006 through March
19 of 2007, just coincidentally the time frame Shannon and her
20 mother are living in Norwich. Prior to that he barely is in
21 New York State, barely has any contact, even though he owns
22 property. There is more sufficient evidence to show one of
23 his reasons for traveling was to engage in sexual acts with
24 this minor and for the jury to conclude that. Sex
25 trafficking count as to both defendants it applies and there

1 is sufficient evidence for both. The victim telling the jury
2 that she was taken to hotels on two occasions where men had
3 sex with her and she saw money that was left on the table
4 from those men for defendant O'Connor is sufficient to allow
5 the jury to conclude that she trafficked Shannon for sexual
6 acts. The other evidence I already covered with respect to
7 rent and how the evidence supports the fact that there was
8 consideration given by Mr. Sacco to the defendant for rental
9 exchange.

10 Count three Mr. Fischer argues requires force.
11 I believe that's an incorrect statement of law. Count three
12 can be violated in one of two ways and, in fact, the statute
13 is designed to address two different types of acts. One is
14 if the sexual acts and the sex trafficking involves people
15 above the age of 18. The statute then requires force. But
16 there is a second part of that statute which says that if the
17 person is a minor, under the age of 18, there is no force
18 element required and the sex trafficking then becomes the
19 quid pro quo for something in exchange for allowing one
20 person to engage in sex acts with another which effects
21 interstate commerce. So count three does not require any
22 force with respect to Shannon O'Connor because that is the
23 second way that that statute can be violated and not the
24 first.

25 A large portion of the defense argument here

1 is that the victim is incredible. That's for the jury to
2 decide with all due respect, and if the jury decides that
3 this victim is credible, either partly or wholly, there is a
4 sufficient basis for them to convict both defendants.

5 The possession and the child pornography
6 images involved. They involve both. They involve images
7 that were taken of Shannon O'Connor either by Mr. Sacco or by
8 defendant O'Connor by George Lang it can be any one or more
9 of those. It also does include any images that were found in
10 any possessions of the defendants and in this case Mr. Sacco.
11 So with all due respect I disagree with Mr. Fischer's
12 analysis of what is or is not charged. Simply put, Judge,
13 the interstate aspects here are proven in many different
14 ways. The production counts relate to specific instances of
15 a child being raped and photographed. The fact that
16 photographs aren't found is not by any stretch the end all of
17 the argument or of the jury's consideration of the case. I
18 compared it to something of the nature, because we have a
19 dead body in a murder case but we don't have a gun, the
20 murder didn't happen. It does flow. The fact that there is
21 sufficient evidence presented to a jury of specific acts
22 involving a minor where photographs were taken and then those
23 photographs are either destroyed or in some way secreted
24 doesn't make the act go away and it doesn't mean that the
25 crime was committed. There's more than enough evidence for

1 this jury to conclude that. There's physical evidence and
2 testimonial evidence and on all those bases, Judge, I believe
3 this case is simply a case where the jury needs to decide
4 what are the facts, what aren't the facts and to decide
5 whether the evidence supports the charges.

6 THE COURT: All right. Well, the Court will
7 reserve decision on the motion. I'll be issuing a writing.
8 I'd like to see counsel right now in chambers. We're going
9 to start our charge conference.

10 (Chambers for charge conference).

11 THE COURT: Defendant Sacco's attorney, Mr.
12 Fischer, has listened to the Court's proposed charge on the
13 fact that the jury need not focus on investigative techniques
14 and he objects to that and the Court's going to charge it in
15 any event and give him an exception to that?

16 Did you want to make a further record.

17 MR. FISCHER: No, your Honor. That's direct
18 and fair.

19 THE COURT: Okay.

20 (Continuation of Charge Conference).

21 THE COURT: The Court has indicated it's going
22 to give an aiding and abetting charge and has read the charge
23 in its entirety to all those present. And defense counsel
24 all together unanimously agree that's inappropriate in this
25 case and it should not be charged and insofar as the Court

1 charges it, I will give each of -- every defendant
2 individually an exception to the charge.

3 MISS PEEBLES: Which count?

4 MR. EGAN: Count three requires commercial sex
5 which would require a quid pro quo in exchange. I don't see
6 how you can aid and abet unless you're getting something.

7 THE COURT: If you don't do every act that you
8 have to do to violate that statute, but you merely help
9 somebody perform that act, that can be aiding abetting.

10 MR. EGAN: One person is getting something,
11 one person is getting something, rent money, Shannon, right?
12 You have to have an exchange between two people.

13 THE COURT: I agree with that.

14 MR. LOVRIC: That also applies to the Best
15 Western.

16 MISS PEEBLES: Again, money is being
17 exchanged.

18 MR. EGAN: Linda can't just be an aider and
19 abettor.

20 THE COURT: First of all, Dean Sacco can't be
21 aiding and abetting the Best Western accounts because it's
22 not possible but with the production count it seems to me
23 that --

24 MR. EGAN: It may but count three, the
25 commercial sex act.

1 THE COURT: You think it doesn't apply?

2 MR. EGAN: I can't see how it does.

3 THE COURT: Explain that to us, Miro.

4 MR. LOVRIC: I'm just looking at the elements
5 real quick.

6 THE COURT: I don't know. He's arguing the
7 statute can't be violated unless you have a quid pro quo,
8 therefore, you can't have aiding and abetting. It's a double
9 concept.

10 MR. LOVRIC: Yeah, I'm not sure with count
11 three that I would require it.

12 THE COURT: Think about it.

13 MR. LOVRIC: But I do think it applies to the
14 production counts because production is here, not here.

15 THE COURT: So you talking about count four?

16 MR. LOVRIC: Yes. Count four and also count
17 five because count five Sacco can aid and abet O'Connor.
18 O'Connor is charged only in count five but Sacco may have
19 committed or aided and abetted in commission of the elements
20 that she didn't commit. And because count five charges her
21 as being a parent involved in the production of child porn
22 but again the jury could say, well, you know, he did the
23 picture taking, for the part that we believe she didn't and
24 how is it that she's guilty of count five if she didn't snap
25 pictures. That's where aiding and abetting comes into play.

1 Count four, it applies to both of them. One may have done
2 certain elements, the other one not. There's no way around
3 that.

4 THE COURT: It's inapplicable to count three,
5 we can agree on that.

6 MR. LOVRIC: I would agree with that.

7 THE COURT: Move it.

8 LAW CLERK: Limit it to four and five?

9 MR. LOVRIC: Four, five, and seven.

10 Possession. Same thing. He took pictures and he can possess
11 the camera but she aided and abetted in the creation of that.

12 (Continuation of Charge Conference)

13 THE COURT: Between in or about August 2006,
14 March 2007, in the Northern District of New York and
15 elsewhere, the defendant Dean Sacco did travel in interstate
16 commerce for the purpose of engaging in illicit sexual
17 conduct with a minor under the age of 18. One of the
18 elements is that one of the purposes of defendant's travel
19 across state lines was to engage in illicit sexual conduct
20 with another person and you say, Kelly, that's got to be a
21 dominant purpose. In other words, he wasn't coming up here
22 to be with Shannon. He was coming up here to fix the house
23 up so it could be rented?

24 MR. FISCHER: Well, and there's language in
25 this decision, US against Sarios, this relates to 2251. As I

1 re-read this, it applies to 2251. At some point in 2251
2 there's a charge that as long as the travel is in connection
3 with the illicit purpose. As I re-read this, it doesn't just
4 apply to Mr. Sacco traveling up for count six. I believe it
5 also applies to the earlier counts, 2251 count. In that case
6 it was a camping trip. It was alleged, the defense was that
7 it was a spur of the moment event.

8 THE COURT: It's got to be a dominant motive
9 but it can be one of several dominant motives so you want
10 that in this charge, don't you, Kelly?

11 MR. FISCHER: Yes. And the remaining portion
12 of that where it says not just incident to the travel.

13 THE COURT: Okay. Let's see. Accordingly, we
14 hold that a jury may find a violation of 2251A so long as the
15 evidence shows that illegal sexual activity for the
16 production of visual depictions of that activity was one of
17 the dominant motives for the interstate transportation of the
18 minors and not merely an incident of transportation.

19 MR. FISCHER: Yeah, that was the nature of the
20 Mann Act, that they traveled over interstate lines. I think
21 that rule with respect to traveling across state lines, not
22 just being one of the purposes, but it having to be a
23 dominant purpose. One of the dominant purposes. I think
24 that language is what applies to the -- in principal to these
25 charges.

1 MISS PEEBLES: I think there are other
2 circuits that address that and that is one of the things that
3 they say in the others that we looked at. We didn't focus on
4 that particular count.

5 THE COURT: It's not your client's problem.

6 MISS PEEBLES: But I did see that.

7 MR. LOVRIC: I've seen case law from the
8 circuit saying it has to be one of the purposes for
9 traveling.

10 MISS PEEBLES: Dominant I think.

11 MR. LOVRIC: I've never seen that language
12 dominant but I seen it saying one of the purposes for going.
13 It can't be just that you happen to be in Vegas on vacation
14 and with no evidence of anything except you're there, you
15 have sex with a minor, that would not violate the statute.

16 MR. EGAN: Or like the August occasion,
17 assuming it happened.

18 MR. LOVRIC: Yeah, the August, the first one
19 they may conclude that doesn't violate the statute but the
20 others one do. Well, Sacco just came up to let them in or
21 whatever, check his rent or whatever. Make sure the tenants
22 were coming in and then he rapes her.

23 MR. FISCHER: That's consistent with your
24 argument really that he comes up more frequently afterward.

25 MR. LOVRIC: After first, second, third.

1 After that if he is coming up, I'm going to fix up the
2 apartment and, by the way, I know Shannon's up there, I'll
3 have a good time with her. As long as that's one of the
4 purposes, it violates the statute.

5 THE COURT: I'll put the word dominant in.
6 We'll take a look at it before we go to the jury, remind me,
7 and we'll decide whether that word comes in or stays out.

8 MR. FISCHER: Also, again, the incidental
9 aspect of that holding that it cannot have just been an
10 incident to the interstate travel is important in this case
11 because I think that that conforms to what the proof is here.
12 That at least originally it was a coincidental coincidence of
13 two maelstroms.

14 MR. LOVRIC: The only difficulty with that is
15 it dilutes the original part of the charge which it has one
16 purpose. If you start saying it can't be incidental then
17 you're like starting to backtrack on what you said. It has
18 to be one of the purposes. It's one of the purposes. It
19 means it has to be thought out process. It can't be just the
20 person happens to be there.

21 MR. FISCHER: I think they're entirely
22 incident that it must be a dominant purpose, not a
23 coincidence. Those two reside side by side in piece.
24 There's no problem with those two being submitted in the same
25 breath.

1 MR. LOVRIC: I don't know about that.

2 THE COURT: We're still on the record so
3 let's -- I'll read once again the holding of Judge Calabresi
4 in the Second Circuit Court of Appeals, US versus Sarios, 87
5 Fed 3rd 34, at paragraph 21. Accordingly, we hold that a
6 jury may find a violation of 2251A so long as the evidence
7 shows that illegal sexual activity for the production of
8 visual depictions of that activity was one of the dominant
9 motives for the interstate transportation of the minors and
10 not merely an incident of the transportation. And I think
11 what counsel for Mr. Sacco wants me to do is not only use the
12 words, one of the dominant motives, but also incorporate into
13 the charge that it was not an incident of the transportation
14 and I think that language refers to the bringing of a person
15 across a state line for purposes of having sexual activity
16 and may not be applicable to the situation where a person
17 comes up here or one of the dominant purposes is to engage in
18 the activity for the purpose of making the depiction. He
19 brings a camera with him but he doesn't bring the person with
20 him. I'm not sure that's a distinction but it doesn't seem
21 like it would apply here. I'll give you an exception for not
22 adding that in.

23 MR. FISCHER: Thank you.

24 THE COURT: Off the record.

25 (Discussion held off the record)

(Court stands adjourned)

C E R T I F I C A T I O N

I, VICKY A. THELEMAN, RPR, CRR, United States Court Reporter in and for the United States District Court, Northern District of New York, do hereby certify that I attended at the time and place set forth in the heading hereof; that I did make a stenographic record of the proceedings had in this matter and cause the same to be transcribed; that the foregoing is a true and correct copy of the same and the whole thereof.

VICKY A. THELEMAN, RPR, CRR
United States Court Reporter
US District Court - NDNY

Dated: August 25, 2008.